

CODE  
OF THE  
CITY OF HESSTON  
KANSAS

Published Under the Authority and by the Direction of  
The Governing Body of the City of Hesston,  
Kansas, this 12th day of February, 2007

**Current version modified by individual ordinances as of August 17, 2024**

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A Codification of the General Ordinances  
of the City of Hesston, Kansas

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**ROSTER OF CITY OFFICIALS**

**CITY OF HESSTON**

**GOVERNING BODY**

**Mayor**

David K. Kauffman

**Council Members**

Brad Unruh

Michael Wallace

Larry Fuqua

Clare Moore

Susan Swartzendruber

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**Administrative Officials**

Gary Emry  
City Administrator

Jason Thrasher  
City Clerk

J.T. Klaus  
City Attorney

Rhonda Prieb  
City Treasurer

Randall Pankratz  
Municipal Judge

Russ Buller  
Fire Chief

Chris Eilert  
Chief of Police

## PREFACE

This volume contains the Code of the City of Hesston, Kansas, 2007. As expressed in the adopting ordinance, the code supercedes all ordinances passed prior to February 12, 2007 which are not included herein or recognized as continuing in force by reference thereto. The code was prepared by the staff of the League of Kansas Municipalities and Hesston city officials under the authority of Sections 12-3014:3015 of the Kansas Statutes Annotated.

This code is arranged in chapters, articles, and sections in a manner similar to the Kansas Statutes Annotated arrangement. Head notes and footnotes are included; however, these do not constitute a part of the code and no implication or presumption of intent or construction is to be drawn therefrom.

Any section of this code may be amended or repealed by ordinary ordinance by reference to the code section number as follows:

"Section 1-105 of the Code of the City of Hesston 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 code may be added as follows:

"The Code of the City of Hesston is hereby amended by adding a section (or article or chapter) which reads as follows: (the new provision shall be set out in full)"

All sections or articles or chapters to be repealed shall be repealed by specific reference as follows:

"Section 1-105 (or article or chapter) of the Code of the City of Hesston is hereby repealed."

The user's attention is directed to the **Governing Body Handbook**, published by the League of Kansas Municipalities, both as a source of general information and as an index to the pertinent sections of the Kansas Statutes Annotated.

An index is included in this volume, and the user's attention is also directed to indexes which may appear in standard codes incorporated by reference in this Code.

PREPARED AND PUBLISHED BY  
THE LEAGUE OF KANSAS MUNICIPALITIES

Scott W. Hildebrand  
Staff Attorney

**ORDINANCE NO. 010-1987-066**

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE CODIFICATION OF THE GENERAL ORDINANCES OF THE CITY OF HESSTON, KANSAS, AND THE PUBLICATION OF SUCH CODIFICATION IN PERMANENTLY BOUND OR LOOSELEAF BOOK FORM.

Be it Ordained by the Governing Body of the City of Hesston:

Section 1. That a codification of the general ordinances of the City of Hesston, Kansas, including supplements thereto, as authorized by K.S.A. 12-3014 and 12-3015, is hereby ordered, authorized and provided for, the preparation of which shall be done by the League of Kansas Municipalities as provided by contract. When completed, the codification shall be adopted by ordinance and published together with the adopting ordinance in loose-leaf book form. No fewer than 10 copies shall be published. Such codification shall be entitled, "Code of the City of Hesston, Kansas," of the year in which the work is completed and ready for publication. The said code shall be duly certified by the City Clerk. One copy of the code shall be filed in the office of the City Clerk and shall be designated as and shall constitute the official ordinance book. Three additional copies shall be filed in the office of the city clerk and shall be designated for use by the public.

Section 2. That this ordinance shall take effect and be in force from and after its publication once in the official city newspaper.

Passed and Approved by the Governing Body this 30th day of November, 1987.

/s/ John D. Waltner, Mayor

ATTEST: /s/ Jean Krehbiel, City Clerk

(SEAL)

## ORDINANCE NO. 010-2007-167

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF HESSTON, KANSAS, AUTHORIZED BY ORDINANCE NO. 010-1987-066 PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Hesston, Kansas:

Section 1. The codification of ordinances of the City of Hesston, Kansas, authorized by Ordinance No. 010-1987-066 and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Hesston, Kansas, 2007," is hereby adopted and ordained as the "Code of the City of Hesston, Kansas, 2007," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

Section 2. All ordinances and parts of ordinances of a general nature passed prior to February 12, 2007, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Hesston, Kansas, 2007," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

Section 3. In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

- (a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
- (b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
- (c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
- (d) Ordinances naming or changing the names of streets, avenues and boulevards;
- (e) Ordinances authorizing or directing public improvements to be made;
- (f) Ordinances creating districts for public improvements of whatsoever kind or nature;
- (g) Ordinances levying general taxes;
- (h) Ordinances levying special assessments or taxes;
- (i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
- (j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
- (k) Ordinances authorizing contracts;
- (l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
- (m) Ordinances relating to compensation of officials, officers and employees of the city;
- (n) Ordinances of a temporary nature;

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

Section 4. The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the head notes and footnotes at

the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

Section 5. The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

Section 6. If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Hesston, Kansas, 2007," 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.

Section 7. This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Hesston, Kansas, 2007," as provided in K.S.A. 12-3015.

Passed by the Governing Body of the City of Hesston, Kansas, this 12th day of February, 2007.

/s/ John D. Waltner, Mayor

ATTEST: /s/ Dennis Nichols, City Clerk

(SEAL)

**CERTIFICATE OF THE CITY CLERK**

Office of the City Clerk  
City of Hesston, Kansas

State of Kansas            )  
  )  
Harvey County             )

I, Dennis Nichols, City Clerk of the City of Hesston, Harvey County, Kansas do hereby certify that said city is a city of the second class of the mayor-council form of government under the statutes of Kansas; that this codification of the general ordinances of said city and the publication thereof in book form were ordered and authorized by the governing body by Ordinance No. 010-1987-066 and in accordance therewith is entitled the "Code of the City of Hesston, Kansas, 2007," that said codification was adopted as the "Code of the City of Hesston, Kansas, 2007," by the governing body by Ordinance No. 010-2007-167 passed on the 12th day of February, 2007, as authorized by Section 12-3015 of the Kansas Statutes Annotated; that said Ordinance No. 010-2007-167 and said codification of general ordinances as contained in this volume will take effect upon publication of 10 or more copies; that the publication of 10 copies of this code and adoptive Ordinance No. 010-2007-167 constitute due passage of this code and all general ordinances contained therein; that the codification and adoptive Ordinance No. 010-2007-167 as contained herein are true and correct copies; and that said publication imports absolute verity and is to be received in evidence in all courts and places without further proof as provided by 12-3015 of the Kansas Statutes Annotated.

I further certify that the "Code of the City of Hesston, Kansas, 2007," and the matter therein contained will take effect upon publication and be in force from and after February 12, 2007.

Witness my hand and the seal of the City of Hesston, Kansas, at my office in Hesston, Kansas, this 12th day of February, 2007.

/s/ Dennis Nichols, City Clerk  
City of Hesston, Kansas

(S E A L)

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## CHAPTER I. ADMINISTRATION

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### ARTICLE 1. GENERAL PROVISIONS

- 1-101. CODE DESIGNATED. The chapters, articles and sections herein shall constitute and be designated as "The Code of the City of Hesston, Kansas," and may be so cited. The Code may also be cited as the "Hesston City Code."  
(Code 1990)
- 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 Hesston, Kansas.
  - (b) Code - shall mean "The Code of the City of Hesston, Kansas."
  - (c) Computation of Time. - The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be a Saturday, Sunday, or legal holiday, that day shall be excluded.
  - (d) County - means the County of Harvey in the State of Kansas.
  - (e) 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.
  - (f) Gender. - Words importing the masculine gender include the feminine and neuter.
  - (g) Governing Body - shall be construed to mean the mayor and city council of the city, or those persons appointed to fill a vacancy in the office of mayor or the city council as provided in this code.
  - (h) 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 powers or other regulatory powers.
  - (i) 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.
  - (j) Month - shall mean a calendar month.
  - (k) Number. - Words used in the singular include the plural and words used in the plural include the singular.

(l) 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."

(m) Officers, departments, etc. - Officers, departments, boards, commissions and employees referred to in this code shall mean officers, departments, boards, commissions and employees of the city, unless the context clearly indicates otherwise.

(n) 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.

(o) Person - includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit, as well as an individual.

(p) Property - includes real, personal and mixed property.

(q) Real Property - includes lands, tenements and hereditaments, and all rights thereto and interest therein, equitable as well as legal.

(r) Shall, may. - "Shall" is mandatory and "may" is permissive.

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

(t) Signature, subscription - includes a mark when the person cannot write, when his or her name is written near such mark and is witnessed by a person who writes his or her own name as a witness.

(u) State - shall be construed to mean the State of Kansas.

(v) 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.

(w) 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.

(x) Tenses. - Words used in the past or present tense include the future as well as the past and present.

(y) Writing or written - may 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.

(z) Year - means a calendar year, except where otherwise provided.

(Code 1990)

1-103. EXISTING ORDINANCES. The provisions appearing in this code, so far as they are in substance the same as those of ordinances existing at the time of the effective date of this code, shall be considered as continuations thereof and not as new enactments. (Code 1990)

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 1990)

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 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 1990)

1-106. PARENTHETICAL AND REFERENCE MATTER. The matter in parenthesis at the ends 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. This code is a new enactment under the provisions of K.S.A. 12-3014 and 12-3015. Reference matter not in parenthesis is for information only and is not a part of this code. (Code 1990)

1-107. AMENDMENTS; REPEAL. Any portion of this code may be amended by specific reference to the section number as follows: "Section \_\_\_\_\_ of the code of the City of Hesston 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 code may be added as follows: "The code of the City of Hesston is hereby amended by adding a section (or article or chapter) which reads as follows: . . .(the new provisions shall be set out 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 Hesston is hereby repealed." (Code 1990)

1-108. 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 and when the ordinance is signed by the mayor. 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. (K.S.A. 12-3002; Code 2003)

1-109. SAME; 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 1990)

1-110. SAME; PUBLICATION. No ordinance, except those appropriating money, shall be in force until published in the official city newspaper by the city clerk. One publication of any such ordinance shall be sufficient unless additional publications are required by statute or ordinance. The publisher of the newspaper shall prefix such published ordinance by a line in brackets stating the month, day and year of such publication. (K.S.A. 12-3007; Code 1990)

1-111. SAME; ORDINANCE BOOK. 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. (K.S.A. 12-3008; Code 1990)

- 1-112. 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. (Code 1990)
- 1-113. 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 is incorporated by reference herein as if set out in full. (K.S.A. 12-120:121; Code 1990)
- 1-114. ALTERING CODE. It shall be unlawful for any person, firm or corporation 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 Hesston to be misrepresented thereby. This restriction shall not apply to amendments or revisions of this code authorized by ordinance duly adopted by the governing body. (Code 1990)
- 1-115. SCOPE OF APPLICATION. Any person convicted of doing any of the acts or things prohibited, made unlawful, or the failing to do any of the things commanded to be done, as specified and set forth in this code, shall be deemed in violation of this code and punished in accordance with section 1-116. Each day any violation of this code continues shall constitute a separate offense. (Code 1990)
- 1-116. GENERAL PENALTY. 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 of not more than \$1,000; or,
  - (b) Imprisonment in jail for not more than 179 days; or,
  - (c) Both such fine and imprisonment not to exceed (a) and (b) above.
- (Code 1990)
- 1-117. 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 1990)

## ARTICLE 2. GOVERNING BODY

- 1-201. GOVERNING BODY; CITY COUNCIL NUMBER; QUALIFICATIONS. The City Council shall consist of five citizens of the City who, together with the Mayor, shall be qualified electors of the City of Hesston, Kansas under the Constitution of the State of Kansas. The City Council and the Mayor shall serve for a term of four years. (C.O. 140-2016-040, Sec. 3)
- 1-202. POWERS GENERALLY. All powers exercised by cities of the second class or which shall hereafter be conferred upon them shall be exercised by the governing body, subject to such limitations as prescribed by law. All executive and administrative authority granted or limited by law shall be vested in the mayor and city council as governing body of the city. (K.S.A. 12-103; Code 1990)
- 1-203. MEETINGS; DATE, TIME AND LOCATION. Regular meetings of the council shall be held on the second Monday of each month at 6:00 o'clock p.m. in the Council Chamber/Municipal Court Building located at 110 E. Smith Street. Special meetings may be called by the mayor or acting mayor as declared by necessity or upon written request of any three members of the council. In all cases, it shall require three of the five council members elect to constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as the council, by ordinance, may have previously prescribed. (Ord. No. 020-2019-171)
- 1-204. SAME; QUORUM. In all cases, it shall require three of the five councilmembers-elect to constitute a quorum to do business. (K.S.A. 14-111; C.O. No. 140-1995-010, Sec. 2; Code 2007)
- 1-205. POWERS OF THE MAYOR. The mayor shall preside at all meetings of the governing body. The mayor 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 officers and affairs of the city;
  - (b) Take care that the ordinances 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 treasury for money.
- (K.S.A. 14-301:302; Code 1990)
- 1-206. PRESIDENT OF THE COUNCIL. The City Council shall elect from its membership a President of the Council. The President of the Council shall preside in the absence of the Mayor. If a vacancy occurs in the office of the Mayor by death, resignation, removal from the City, removal from office, refusal to qualify or otherwise, the President of the Council shall become Mayor until the next regular City election and

the vacancy created in the office of the Council Member becoming Mayor shall be filled by the governing body of the City. Thereupon, the City Council shall elect from its membership a new President of the Council. (C.O. 140-2016-040, Sec. 3)

1-207. ADMINISTRATIVE POWERS. The governing body may designate whether the administration of a policy or the carrying out of any order shall be performed by a committee, an appointive officer, or the mayor. If no administrative authority is designated it shall be vested in the mayor. (Code 1990)

1-208. VACANCIES IN GOVERNING BODY; PROCEDURE; DEADLINE. (a) No person shall be eligible for the office of Council Member who is not at the time of election an actual resident of the City. If any Council Member moves from the City during such Council Member's term of office, the office shall be deemed vacant. In case of a vacancy in the office of a Council Member occurring by reason of resignation, death, removal from the City, removal from office, or by becoming Mayor by reason of being President of the Council when a vacancy occurs in the office of Mayor, the Mayor shall appoint, with the consent of a majority of the remaining Council Members, some suitable elector of the City to fill the vacancy until the expiration of the term of such office.

(b) The procedure for filling vacancies in the governing body shall apply, provided such vacancies have been filled within 60 days of the vacancy. If a vacancy is not filled within 60 days of the vacancy, the Kansas statutory procedure to fill vacancies shall apply. (C.O. 140-2016-040, Sec. 3)

1-209. COMPENSATION. The monthly compensation for the mayor is set at \$500, and the council members at \$350 per month. (Ord. 010-2022-226, Sec. 1)

1-210. EXPENSES. Each member of the governing body shall receive for his or her services and as reimbursement for his or her expenses, compensation as follows:  
(a) Mileage at the same rate as is established by law by the state of Kansas for state employees for each mile traveled by the shortest route upon the performance of duties assigned by the mayor and/or council,  
(b) Reimbursement for actual food and lodging expenses upon the performance of duties assigned by the mayor and/or council, provided such expenses shall be documented by proper receipts. (Code 1990)

1-211. INCORPORATING CODE OF PROCEDURE FOR KANSAS CITIES. There is hereby incorporated by reference for the purpose of establishing a code of procedure for the conduct of city council meetings and meetings of other boards, committees and commissions of the City of Hesston, Kansas, that certain model code known as the "Code of Procedure for Kansas Cities," First Edition (2004), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas [save and except for such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed]. (Ord. 010-2004-141, Sec. 1; Code 2007)



1-212. SAME; OFFICIAL COPIES. At least three copies of the “Code of Procedure for Kansas Cities” shall be marked or stamped OFFICIAL COPY AS INCORPORATED BY ORDINANCE NO. 010-2004-141, and to which shall be attached a copy of this ordinance. All official copies shall be filed with the city clerk to be open to inspection by the public during all reasonable business hours. Official copies of the “Code of Procedure for Kansas Cities” shall be furnished to all persons or departments charged with the enforcement of the code or to whom the Code is applicable and to such others as may be deemed necessary. All such copies shall be furnished at the cost of the city.  
(Ord. 010-2004-141, Sec. 2; Code 2007)

1-213. SAME; AMENDMENTS. Section 12 of the “Code of Procedure for Kansas Cities” is hereby changed to read as follows:

**Order of Business.** At the hour appointed for the meeting, the mayor shall call the meeting to order. The president of the council shall chair the meeting in the absence of the mayor. Upon having a quorum present, the governing body shall proceed to business, which shall generally be conducted in the following order:

- (1) Additions to Agenda;
- (2) Consent Agenda;
- (3) Constituency Comments;
- (4) Proclamations and Awards;
- (5) Resolutions and Ordinances;
- (6) Old Business;
- (7) New Business;
- (8) Reports of staff and committees;
- (9) Adjournment.

(Ord. 010-2004-141, Sec. 3; Code 2007)

1-214. CODE OF ETHICS. (a) Declaration of Policy - The proper operation of our government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in the proper channels and that the public have confidence in the integrity of its government. In recognition of those goals, there is hereby established a Code of Ethics for all officials and employees, whether elected or appointed, paid or unpaid. The purpose of this code is to establish ethical standards by setting forth those acts or actions that are incompatible with the best interests of the city.

(b) Responsibilities of Public Office - Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the nation, state, and city and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the long term public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.

(c) Dedicated Service - All officials and employees of the city should be responsive to the political objectives expressed by the electorate and the programs developed to attain those objectives. Appointive officials and employees should

adhere to the rule of work and performance established as the standard for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

(d) Fair and Equal Treatment - (1) Interest in Appointments. Canvassing of members of the city council, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the municipal service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the city council.

(2) Use of Public Property - No official or employee shall request or permit the use of city-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as city policy for the use of such official or employee in the conduct of official business.

(3) Obligations to Citizens - No official or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

(e) Conflict of Interest - No elected or appointive city official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her duties in the public interest or would tend to impair his or her independence of judgment or action in the performance of his or her official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association.

Specific conflicts of interest are enumerated below for the guidance of officials and employees:

(1) Incompatible Employment - No elected or appointive city official or employee shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties.

(2) Disclosure of Confidential Information - No elected or appointive city official or employee, shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city. Nor shall he or she use such information to advance the financial or other private interest of himself, herself or others.

(3) Gifts and Favors. No elected or appointive city official or employee shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm, or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the city; nor shall any such official or employee (a) accept any gift, favor or thing of value that may tend to influence him or her in the discharge of his or her duties or (b) grant in the discharge of his or her duties any improper favor, service, or thing of value. The prohibition against gifts or favors shall not apply to: (a) an occasional nonpecuniary gift, of only nominal value or (b) an award publicly presented in recognition of public service or (c) any gift which would have been offered or given to him or her if not an official or employee.

(4) Representing Private Interest Before City Agencies or Courts - No elected or appointive city official or employee whose salary is paid in whole or in part by the city shall appear in behalf of private interest before any agency of this city. He or she shall not represent private interests in any action or proceeding against the interest of the city in any litigation to which the city is a party.  
(Code 1990, Code 2004, 1-212)

### ARTICLE 3. OFFICERS AND EMPLOYEES

- 1-301. OFFICERS; APPOINTMENT; REMOVAL. The Mayor shall appoint, by and with the consent of the City Council, a Municipal Judge of the Municipal Court, a Chief of Police, City Clerk, City Administrator, City Treasurer, Director of Emergency Services, and City Attorney, all of whom shall serve a term of one year, unless specified by contract, and shall appoint such other officers and employees as the Mayor and City Council may deem necessary; and may retain a licensed professional engineer to act in the capacity of city engineer for specified duties. The terms of office for all City officers serving on the effective date of adoption of this ordinance shall end at the regular City Council meeting in February. The duties and pay of such officers shall be regulated by ordinance. (C.O. 140-2016-040, Sec. 3)
- 1-302. EMPLOYEES. The mayor shall have authority to hire all other employees, or such authority may be delegated to the city administrator. (Code 2003)
- 1-303. REMOVAL. (a) A majority of all members elect of the governing body may remove any appointed officer.  
(b) For good cause, the mayor may suspend at any time any appointed officer.  
(c) Employees, other than appointed officers, may be removed by the mayor upon recommendation of the city administrator.  
(K.S.A. 14-101; Code 2003)
- 1-304. VACANCY IN OFFICE. Whenever a vacancy occurs in any appointive office for whatever reason, the vacancy shall be filled by the governing body. Any person appointed to fill such vacancy shall serve only until the next regular time for appointment. (K.S.A. 14-205; Code 1990)
- 1-305. 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.

(Code 1990)

- 1-306. SAME; FISCAL RECORDS. The city clerk shall:  
(a) Prepare and keep suitable fiscal records;  
(b) Assist in preparing the annual budget;  
(c) Audit all claims against the city for goods or services rendered for the consideration of the governing body. His or her accounts shall properly show the amounts paid from any fund of the city and the cash balance existing in each fund;  
(d) Keep an accurate account of all bonds issued by the city;  
(e) Keep a record of all special assessments.  
(Code 1990)
- 1-307. SAME; SEAL; OATHS. The city clerk shall:  
(a) Have custody of the corporate seal of the city and shall affix the same to the official copy of all ordinances, contracts, and other documents required to be authenticated;  
(b) Have power to administer oaths for all purposes pertaining to the business and affairs of the city;  
(c) Keep suitable files of all such oaths required to be deposited in his or her office.  
(Code 1990)
- 1-308. SAME; WITHHOLDING AGENTS. The city clerk is designated as the withholding agent of the city for the purposes of the Federal Revenue (Income) Act, and shall perform the duties required of withholding agents by said act or any other act requiring withholding from the compensation of any city officer or employee. The clerk shall perform such other duties as may be prescribed by the governing body or the Kansas statutes. (Code 1990)
- 1-309. DEPUTY CITY CLERK. (a) The office of deputy city clerk is hereby established. The mayor shall appoint, by and with the consent of the city council, the deputy city clerk. The person so appointed and confirmed shall hold the office for a term of one year and until a successor is appointed and confirmed.  
(b) The deputy city clerk shall perform those duties assigned to that office by the city clerk.  
(c) Whenever a vacancy occurs in the position of city clerk and the city is without a person appointed, confirmed or qualified to hold that office, the deputy city clerk shall become the acting city clerk and fulfill the duties of that office.  
(Ord. 010-1985-058, Secs. 1:2; Code 2007)
- 1-310. CITY TREASURER. The city treasurer shall:  
(a) Keep a full and accurate record of all money received and paid out in a ledger book provided by the governing body;  
(b) Publish a quarterly financial statement;  
(c) Deposit all public moneys and sign all checks of the city;  
(d) Pay out city funds only upon orders or warrants properly signed by the mayor and city clerk;  
(e) Perform such other duties as may be prescribed by the governing body or the Kansas statutes.  
(K.S.A. 10-803; K.S.A. 12-1608; Code 1990)

1-311. CITY ATTORNEY; OFFICE; DUTIES. There is hereby established the office of city attorney. No person shall be eligible for the office of city attorney who is not an attorney at law admitted to practice in the Supreme Court of the State of Kansas. The city attorney shall be charged with the general direction and supervision of the legal affairs of the city. The city attorney shall:

- (a) Attend meetings of the governing body when so directed to attend by 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 such 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) Approve all ordinances of the city as to form and legality;
- (f) Attend planning commission and board of zoning appeals meetings when so directed by the boards;
- (g) Appear and prosecute all violations of city ordinances in municipal court when his or her services shall be required;
- (h) Perform such other duties as may be prescribed by the governing body and the Kansas statutes.

(Code 1990)

1-312. CITY ADMINISTRATOR. (a) There is hereby created and established the office of city administrator. The city administrator shall be appointed by the mayor and by and with the consent of the city council; and he or she shall serve at the pleasure of the council.

(b) The city administrator shall be appointed on the basis of his or her qualifications and his or her ability, and upon appointment must become a resident of the City of Hesston.

(c) The same person may not hold the office of city clerk and the office of city administrator.

(Ord. 010-1979-046, Sec. 1)

1-313. SAME; POWERS, DUTIES AND RESPONSIBILITIES OF CITY ADMINISTRATOR. Except as otherwise provided by law or the ordinances of the city, the city administrator shall:

- (a) Manage, direct, control, and supervise all the administrative departments and services of the city.
- (b) Recommend to the mayor and city council for hiring all appointive officers and employees.
- (c) Supervise, direct, and assign the duties of all appointive officers and employees.
- (d) Prepare and submit the annual budget of the governing body and keep it fully, completely, and timely advised as to the financial condition of the city.
- (e) Exercise general supervision and control over all city purchases and expenditures in accordance with the budget and such policies as may be established by the governing body.

(f) Recommend to the governing body a schedule of salaries for all officers and employees.

(g) Have the care and management of all city-owned land, property, buildings, and equipment.

(h) Develop and prepare such planning, short-range as well as long-range, as the governing body shall request and shall submit such planning to the governing body for action.

(i) Attend all meetings of the governing body and such other meetings of commissions and other organizations as the governing body shall designate and shall regularly report on the status of the city and its services to the governing body.

(j) Make such recommendations to the governing body as are deemed necessary for effective administration of all city services.

(k) Be responsible for the proper and efficient discharge of the duties of all city administrative officers and employees.

(l) Perform such other duties as the governing body may direct.  
(Ord. 010-1979-046, Sec. 2)

1-314. SAME; ORDERS AND REPORTS. It shall be the general practice of the governing body to issue all orders and directives to all city officers and departments and receive reports and communications therefrom through the office of city administrator. (Ord. 010-1979-046, Sec. 3; Code 2003)

1-315. APPOINTMENT OR EMPLOYMENT IN MORE THAN ONE POSITION. The same person may be appointed to more than one appointive office, or employed in more than one department, except that the same person shall not be appointed to incompatible offices. Salaries or wages of such persons shall be prorated between the proper funds of the several offices or departments. (Code 1990)

1-316. CONFLICT OF INTEREST. (a) No city officer or employee shall be signatory upon, discuss in an official capacity, vote on any issue concerning or otherwise participate in his or her capacity as a public official or employee in the making of any contract with any person or business:

(1) In which the officer or employee owns a legal or equitable interest exceeding \$5,000 or five percent, whichever is less, individually or collectively with his or her spouse; or

(2) From which the officer or employee receives, in the current or immediately preceding or succeeding calendar year, any salary, gratuity, other compensation or a contract for or promise or expectation of any such salary, gratuity or other compensation or remuneration having a dollar value of \$1,000 or more; or

(3) In which he or she shall hold the position of officer or director, irrespective of the amount of compensation received from or ownership held in the business.

(b) The prohibitions contained in subsection (a) of this section shall not apply to the following:

(1) Contracts let after competitive bidding has been solicited by published notice; and

(2) Contracts for property or services for which the price or rate is fixed by law.

(K.S.A. 75-4301; Code 1990)

#### **ARTICLE 4. PERSONNEL POLICY AND EMPLOYEE BENEFITS**

1-401.

PERSONNEL RULES AND REGULATIONS. There is hereby incorporated by reference for the purpose of establishing employee personnel rules and regulations the document entitled "Uniform Personnel Rules and Regulations for the City of Hesston." No fewer than three copies of said document shall be marked or stamped "Official Copy as adopted by the Code of the City of Hesston" and which there shall be attached a copy of this section. Said official copies shall be filed with the city clerk and shall be open to inspection and available to the public at all reasonable hours. All departments of the city shall be supplied with copies of such rules and regulations as may be deemed necessary.  
(Ord. 010-1981-038, Sec. 2; Code 1990)



## ARTICLE 5. OATHS AND BONDS

1-501. OATH; AFFIRMATION. All officers and employees of the city, whether elected or appointed, either under the laws of the State of Kansas or ordinances of the city, shall before entering upon the duties of their respective offices, take and subscribe an oath or affirmation as follows:

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 discharge the duties of \_\_\_\_\_ (here enter name of office or position). So help me God."

Affirmation: " I do solemnly, sincerely and truly declare and affirm that I will support the Constitution of the United States and of the State of Kansas and faithfully discharge the duties of \_\_\_\_\_ (enter name of office or position). This I do under the pains and penalties of perjury.  
(K.S.A. 75-4308, 54-104, 54-106; Code 2007)

1-502. OATHS FILED. All officers and employees required to take and subscribe or sign an oath or affirmation shall be supplied the forms for the purpose at the expense of the city and upon taking and subscribing or signing any such oath or affirmation, the same shall be filed by the city clerk. (Code 1990)

1-503. BONDS REQUIRED. (a) The following city officers shall each, before entering upon the duties of his or her office, give a good and sufficient corporate surety bond to the city. The bond shall be in the following amount, to wit:

- (1) City treasurer - \$25,000;
- (2) City clerk - \$25,000;
- (3) Clerk of municipal court - \$1,000;
- (4) Judge of municipal court - \$1,000;

(b) The governing body may provide for the coverage by blanket bond of such officers and employees and in such amounts as the governing body may, by resolution, designate.  
(Code 1990)

1-504. SAME; PREMIUMS. All premiums on surety bonds shall be paid by the city.  
(K.S.A. 78-111; Code 1990)

1-505. CONDITION OF BONDS. Each of the bonds required in section 1-503 of this article shall be conditioned for the faithful performance of duty and all acts required by the laws of Kansas and of the city, and for the application and payment over to the proper persons of all moneys or property coming into the hands of each such officer by virtue of his or her office. (Code 1990)

1-506. APPROVAL OF BONDS. All bonds given to the city shall be approved as to their form by the city attorney and as to surety and sufficiency by the governing body, unless otherwise provided by the laws of the State of Kansas. (Code 1990)

## ARTICLE 6. OPEN RECORDS

- 1-601. POLICY. (a) It is hereby declared to be the policy of the city that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act.
- (b) Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated record custodian thereof, or his or her designated representative.  
(Ord. 010-1983-050, Sec. 1; Code 1990)
- 1-602. RECORD CUSTODIANS. (a) All city officers and employees appointed or designated as record custodians under this article shall: protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the city; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this city for inspecting and copying open public records.
- (b) The official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the Local Freedom of Information Officer that contains basic information about the rights of a requester, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the Kansas Open Records Act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative offices of the city where it is available to members of the public who request public information in person.  
(Ord. 010-1983-048, Sec. 1; Code 2003)
- 1-603. LOCAL FREEDOM OF INFORMATION OFFICERS. The Local Freedom of Information Officer shall:
- (a) Prepare and provide educational materials and information concerning the Kansas Open Records Act;
- (b) be available to assist the city and members of the general public to resolve disputes relating the Kansas Open Records Act;
- (c) respond to inquiries relating to the Kansas Open Records Act;
- (d) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise made available to the public under the Kansas Open Records Act. In establishing such requirements for the content of the brochure, the Local Freedom of Information Officer shall include plainly written basic information about the rights of a requester, the responsibilities of the city, and the procedures for inspecting and obtaining a copy of public records under the Act.  
(Code 2003)
- 1-604. PUBLIC REQUEST FOR ACCESS. All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the record custodian

for each such day at which time any person may request access to an open public record. (Ord. 010-1983-048, Sec. 2; Code 2003)

1-605. FACILITIES FOR PUBLIC INSPECTION. All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring to inspect and/or copy an open public record. The office of the city clerk, being the principal recordkeeper of the city, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the city clerk except when the requested records are not in that office and are available in another city office. (Ord. 010-1983-048, Sec. 1; Code 2003)

1-606. PROCEDURES FOR INSPECTION. Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the governing body for record inspection and copying, including those procedures established by record custodians as authorized by the governing body. Such procedures shall be posted in each city office keeping and maintaining open public records. (Ord. 010-1983-048, Sec. 1; Code 2003)

1-607. APPOINTMENT OF OFFICIAL CUSTODIANS. The following city officers are hereby appointed as official custodians for purposes of the Kansas Open Records Act and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:

(a) City Clerk - All public records kept and maintained in the city clerk's office and all other public records not provided for elsewhere in this section.

(b) City Treasurer - All public records not on file in the office of the city clerk and kept and maintained in the city treasurer's office.

(c) Chief of Police - All public records not on file in the office of the city clerk and kept and maintained in the city police department.

(d) Director of Emergency Services - All public records not on file in the office of the city clerk and kept and maintained in the city fire department.

(e) City Attorney - All public records not on file in the office of the city clerk and kept and maintained in the city attorney's office.

(f) Clerk of the Municipal Court - All public records not on file in the office of the city clerk and kept and maintained in the municipal court.

(Ord. 010-1983-049, Sec. 1; Code 2003)

1-608. APPOINTMENT OF LOCAL FREEDOM OF INFORMATION OFFICER. The city clerk is hereby appointed as the local freedom of information officer and charged with all of the duties as set forth in section 1-603. (Code 2003)

1-609. DESIGNATION OF ADDITIONAL RECORD CUSTODIANS. (a) Each of the official custodians appointed in section 1-606 is hereby authorized to designate any subordinate officers or employees to serve as record custodian. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act.

(b) Whenever an official custodian shall appoint another person as a record custodian he or she shall notify the city clerk of such designation and the city clerk shall maintain a register of all such designations.

(Ord. 010-1983-049, Sec. 2; Code 2003)

1-610. REQUESTS TO BE DIRECTED TO CUSTODIANS. (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Kansas Open Records Act, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.

(b) Whenever any city officer or employee appointed or designated as a custodian under this article is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.

(Ord. 010-1983-049, Sec. 4; Code 2003)

1-611. FEE ADMINISTRATION. The city clerk is hereby authorized to provide the clerk's office, and the office of each record custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee moneys collected to the city treasurer whenever the amount accumulated exceeds \$5, but not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the clerk-finance officer and treasurer of the city.

(Ord. 010-1983-049, Sec. 5; Code 2003)

1-612. INSPECTION FEE. (a) Where a request has been made for inspection of any open public record which is readily available to the record custodian, there shall be no inspection fee charged to the requester.

(b) In all cases not covered by subsection (a) of this section, a record inspection fee shall be charged at the rate of \$14.00 per hour per employee engaged in the record search. A minimum charge of \$5.00 shall be charged for each such request.

(Ord. 010-1983-050, Sec. 2; Code 2003)

1-613. COPYING FEE. (a) A fee of \$0.15 per page shall be charged for photocopying public records, such fee to cover the cost of labor, materials and equipment.

(b) For copying any public records which cannot be reproduced by the city's photocopying equipment, the requester shall be charged the actual cost to the city, including staff time, in reproducing such records.

(Ord. 010-1983-050, Sec. 3; Code 2003)

1-614. PREPAYMENT OF FEES. (a) A record custodian may demand prepayment of the fees established by this article whenever he or she believes this to be in the best interest of the city. The prepayment amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.

(b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the record custodian, such fees are estimated to exceed \$5.00.

(c) Where prepayment has been demanded by the record custodian, no record shall be made available to the requester until such prepayment has been made.

(Ord. 010-1983-050, Sec. 4; Code 2003)

1-615.

PAYMENT. All fees charged under this article shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the city.

(Ord. 010-1983-050, Sec. 5; Code 2003)

## ARTICLE 7. INVESTMENT OF PUBLIC FUNDS

1-701. PURPOSE AND GOALS. It is the purpose of this statement to set forth the public policies of the city relating to the investment of public moneys, and establish procedural requirements as to investment management practice. The objective of the investment policy and program of the city shall be as follows:

(a) The safeguarding of all public moneys shall be of the highest priority. Public money shall not be invested or managed in any matter which would jeopardize the safety of the principal.

(b) Consistent with the requirement of safety, the objective of the investment program shall be to aggressively manage and invest all public moneys to maximize net earnings, consistent with the public responsibility to secure maximum, safe investment return possible from moneys assigned to its stewardship, to relieve demands on the property tax and to otherwise reduce the cost of public services.  
(Code 2007)

1-702. ACTIVE FUNDS; DESIGNATION OF DEPOSITORIES; ELIGIBLE DEPOSITORIES. (a) The governing body shall designate the banks, savings and loan associations and savings banks which shall serve as depositories of its funds. The clerk, treasurer or other city officer or employee having the custody of city funds shall deposit such funds only at the designated banks, savings and loan associations and savings banks. Only banks, savings and loan associations and savings banks that have main or branch offices in Harvey County shall be designated as official depositories. No such bank, savings bank or savings and loan association shall be designated as a depository until the city is assured that it can obtain satisfactory security for its deposits.

(b) The clerk, treasurer or other city officer or employee depositing public funds shall deposit all such public funds coming into such person's possession in their name and official title as such officer. If the governing body fails to designate an official depository or depositories, the officer thereof having custody of city funds shall deposit such funds with one or more banks, savings and loan associations or savings banks which have main or branch offices in Harvey County if satisfactory security can be obtained therefor and if not then elsewhere. In such event, the officer or employee shall serve notice in writing on the governing body showing the names and locations of such banks, savings and loan associations and savings banks where such funds are deposited, and upon so doing the officer or employee having custody of such funds shall not be liable for the loss of any portion thereof except for official misconduct or for the misappropriation of such funds by the officer or employee.

(c) If eligible banks, savings and loan associations or savings banks under subsections (a) or (b) cannot or will not provide an acceptable bid, which shall include services, for the depositing of public funds under this section, then banks, savings and loan associations or savings banks which have main or branch offices in any immediately adjoining county may receive deposits of the city's active funds, if such banks, savings and loan associations or savings banks have been designated as official depositories under subsection (a) and the city can obtain satisfactory security therefor.

(Code 2007)

1-703.

DEFINITIONS. As used in this article the following words and phrases shall mean:

(a) Bank - means any bank incorporated under the laws of the state of Kansas or any other state, or organized under the laws of the United States and which has a main or branch office in Kansas;

(b) Savings and loan association - means any savings and loan association incorporated under the laws of the state of Kansas or any other state, or organized under the laws of the United States and which has a main or branch office in Kansas;

(c) Savings bank - means any savings bank organized under the laws of the United States and which has a main or branch office in Kansas;

(d) Main office - means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;

(e) Branch - means any office within this state, other than the main office, that is approved as a branch by a federal or state supervisory agency, at which deposits are received, checks paid or money lent. Branch does not include an automated teller machine, remote service unit or similar device or a loan production office;

(f) Investment rate - means a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. The 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.

(Code 2007)

1-704.

INVESTMENT OF IDLE FUNDS. Temporarily idle moneys of the city not currently needed, may in accordance with the procedure hereinafter described be invested:

(a) In temporary notes or no-fund warrants issued by the city;

(b) In time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years:

(1) In banks, savings and loan associations and savings banks, which have main or branch offices located in the city; or

(2) If no main or branch office of a bank, savings and loan association or savings bank is located in the city, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of the city is located;

(c) In repurchase agreements with:

(1) Banks, savings and loan associations and savings banks, which have main or branch offices located in the city, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or

(2)(A) If no main or branch office of a bank, savings and loan association or savings bank, is located in the city; or

(B) If no such bank, savings and loan association or savings bank having a main or branch office located in the city is willing to enter into such an agreement with the city at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan

associations or savings banks which have main or branch offices in the county or counties in which all or part of the city is located; or

(3) If no bank, savings and loan association or savings bank, having a main or branch office in such county or counties is willing to enter into such an agreement with the city at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks located within the State of Kansas;

(d) In United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 2005 Supp. 17-12a401, and amendments thereto;

(e) In the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(f) In the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto; or

(g) In multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in county or counties where city is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which \_\_\_\_\_ is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 12-1677a, and amendments thereto.

(h) The investments authorized in subsections (d), (e), (f) or (g) of this section shall be utilized only if the banks, savings and loan associations and savings banks eligible for investments authorized in subsection (b), cannot or will not make the investments authorized in subsection (b) available to the city at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto.

(i) In selecting a depository pursuant to subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the city and such financial institution will make such deposits available to the city at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the governing body shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the city shall select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of the city is located which will make such deposits available to the city at interest rates



equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and which otherwise qualify for such deposits. (Code 2007)

1-705.           PROCEDURES AND RESTRICTIONS. The city clerk shall periodically report to the governing body as to the amount of money available for investment and the period of time such amounts will be available for investment, and shall submit such recommendations as deemed necessary for the efficient and safe management of city finances. The recommendations of the city clerk shall provide for an investment program which shall so limit the amounts invested and shall schedule the maturities of investments so that the city will, at all times, have sufficient moneys available on demand deposit to assure prompt payment of all city obligations. (Code 2007)

1-706.           CUSTODY AND SAFEKEEPING. Securities purchased pursuant to this article shall be under the care of the city clerk and city treasurer and shall be held in the custody of a state or national bank or trust company, or shall be kept by such officers in a safety deposit box of the city in a bank or trust company. Securities in the original or receipt form held in the custody of a bank or trust company shall be held in the name of the city, and their redemption, transfer, or withdrawal shall be permitted only upon the written instruction of the city officers. Securities not held in the custody of a bank or trust company shall be personally deposited by such officer in a safety deposit box in the name of the city in a bank or trust company, access to which shall be permitted only in the personal presence and under the signature of two of the abovementioned officers. (Code 2007)

1-707.           SALE OR TRANSFER. If, in order to maintain sufficient moneys on demand deposit in any fund as provided in Section 5, it becomes necessary to transfer or sell any securities of such funds, the officers specified in Section 6 may transfer said securities to any other fund or funds in which there are temporarily idle moneys, or shall sell such securities, and for such purpose they shall have authority to make any necessary written direction, endorsement or assignment for and on behalf of the city. (Code 2007)

1-708.           INTEREST ON TIME DEPOSITS. The city clerk shall deposit the interest earned on invested idle funds to the general fund, unless otherwise required or authorized by law. (Code 2007)

## CHAPTER II. ANIMAL CONTROL AND REGULATION

Article 1. General Provisions

Article 2. Dogs

Article 3. Other Animals

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### ARTICLE 1. GENERAL PROVISIONS

2-101. DEFINITIONS. For the purposes of this chapter, the following words and phrases shall mean:

(a) Abandon - includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

(b) Animals - means all vertebrate and invertebrate animals such as but not limited to bovine cattle, horses and other equines, hogs, goats, dogs, cats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or captivated.

(c) Animal Shelter - means the facility or facilities operated by the city or its authorized agents for the purpose of impounding or caring for animals under the authority of this chapter or state law.

(d) At-large - means to be outside of a fence or other enclosure which restrains the animals to a particular premise or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be "At-large."

(e) Bite - means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(f) Cat - means any member of the species felis catus, regardless of sex.

(g) Dangerous or Vicious Animal - means any animal deemed to be dangerous or vicious per section 2-115.

(h) Dog - means any member of the species canis familiaris, regardless of sex.

(i) Domestic Animal - means any dog or cat.

(j) Fowl - means all animals that are included in the zoological class aves, which shall include, but not limited to, chickens, ducks, geese, turkeys, guineas and pigeons.

(k) Harbor - means any person who shall allow any animals to habitually remain or lodge or to be fed within his or her home, store, yard, enclosure or place of business or any other premises where he or she resides or controls.

(l) Humane Live Animal Trap - means any cage trap that upon activation encloses an animal without placing any physical restraint upon any part of the body of such animal.

(m) Humanely Euthanize - means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any other method approved by the American Veterinary Medical Association or the American Humane Society.

(n) Immediate Control - means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.

(o) Kennel - means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one location only, five or more dogs.

(p) Livestock - includes, but is not limited to cattle, horses, goats, sheep or other animals commonly regarded or used as farm or ranch animals.

(q) Neutered - means any male or female cat or dog that has been permanently rendered sterile.

(r) Own - means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal. If a minor owns any such animal subject to the provisions of this chapter, the head of the household of which such minor is a member shall be deemed to own such animal for the purposes of this chapter.

(s) Owner - means the one who owns, or his or her employee, agent, or other competent person into whose charge an animal has been placed by the actual owner as described in subsection (r) above.

(t) Vaccination - means an injection of a vaccine, approved by the State Board of Public Health and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.

(u) Veterinarian - means a doctor of veterinary medicine licensed by the State of Kansas.

(Ord. 020-1987-039, Sec. 16; Code 1990)

2-102.

ANIMAL CONTROL OFFICER; DUTY TO IMPOUND; CITATION ALTERNATIVE. (a) There is hereby created the position of animal control officer for the city and such officer shall be charged with the enforcement of this chapter. The chief of police is designated the animal control officer.

(b) Except as provided in subsection (c), it shall be the duty of the animal control officer to take up and impound all animals found in the city in violation of the provisions of this chapter.

(c) As an alternative to the provisions of subsection (b) of this section, any law enforcement officer or the animal control officer may issue a citation to the owner, harbinger or keeper of an animal in violation of this chapter, and the person receiving the citation shall, within 10 days, appear in the municipal court of the city to answer the charged violation of this chapter.

(Ord. 020-1987-039, Sec. 29; Code 1990)

2-103.

SAME; CAPTURE/DESTRUCTION. When deemed necessary by law enforcement officers or the animal control officer for the health, safety and welfare of the residents of the city, such officers and/or their agents may:

(a) Place a humane trap on public or a requesting resident's property for the purpose of capturing any animal defined in this chapter as creating a nuisance in the city;

(b) Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any animal that is deemed by the animal control officer, in his or her discretion, to be of a danger to itself or to the public health and safety.

(c) Use firearms or other suitable weapons to destroy any rabid animal, any vicious animal as defined in section 2-115, or any animal creating a nuisance as defined in section 2-111, where such animal is impossible or impractical to catch, capture or tranquilize.

(Code 1990)

2-104. SAME; RIGHT OF ENTRY; UNLAWFUL INTERFERENCE. (a) The animal control officer or any law enforcement officer shall have the right of entry upon any private unenclosed lots or lands for the purpose of collecting any animal whose presence thereupon is a violation of this chapter.

(b) It shall be unlawful for any person to interfere with the animal control officer in the exercise of his or her duties.

(Code 1990)

2-105. MUNICIPAL POUND ESTABLISHED. A municipal pound shall be established to carry out the provisions of this chapter. Such a pound may be operated by a contractor and all services required herein may be provided by a contractor. When so contracted, the pound shall have the following services and facilities as a minimum:

(a) Adequate pickup and impounding of all stray and ownerless dogs and cats and animals otherwise in violation of the provisions of this chapter.

(b) Group holding facilities for stray, ownerless and unvaccinated animals impounded for violation of the provisions of this chapter.

(c) Individual isolation facilities for sick, biting, rabid and suspected rabid animals.

(d) Facilities for the humane destruction of animals.

(Code 1990)

2-106. BREAKING INTO POUND. (a) It shall be unlawful for any unauthorized person to open, unlock, break open or attempt to break open the pound, or to take or let out any animal placed therein, or take or attempt to take from an authorized officer of this city any animal taken up by him or her under the provisions of this chapter, or in any manner interfere with or hinder any authorized officer or employee of this city in catching, taking up, or impounding any animal.

(b) It shall be unlawful for any person or persons, other than those duly authorized, to care for, feed, attempt to feed, or interfere in any way with the care of impounded animals.

(Code 1990)

2-107. CRUELTY TO ANIMALS. It shall be unlawful for any person to:

(a) Willfully or maliciously kill, maim, disfigure, torture; beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals, except that reasonable force may be employed to drive off vicious animals;

(b) Drive or work any animal cruelly or cruelly work any maimed, mutilated, infirm, sick or disabled animal, or cause, allow or permit the same to be done;

(c) Have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition except as provided in section 2-108.

(d) Sell or offer for sale, barter, give away, or use as an advertising device or promotional display, living baby chicks, rabbits, ducklings or other fowl under two months of age in any quantity less than 12; or to sell, offer for sale, barter, give away,

or display animals or fowls as specified in this section which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color. This section shall not be construed to prohibit the sale of animals or fowls as specified in this subsection, in proper facilities, by hatcheries or persons engaged in raising and selling such animals and fowls for recognized animal husbandry purposes;

(e) Promote, stage, hold, manage, or in any way conduct any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal;

(f) Neglect or refuse to supply such animal with necessary and adequate care, food, drink, air, light, space, shelter or protection from the elements as necessary for health and well-being of such kind of animal.

(g) Abandon or leave any animal in any place without making provisions for its proper care;

(h) These provisions shall not apply to the exceptions sanctioned under section 2-108.

In addition to the penalties provided in section 1-116 of this code, the municipal court judge may order a person convicted of violation under this section to turn the animal involved over to a designated humane society. All such animals taken by the designated agency may be placed with another or more suitable person or destroyed humanely as soon thereafter as is conveniently possible.

(Ord. 020-1987-039, Secs. 7, 10; Code 1990)

2-108. SAME; EXCEPTIONS. The provisions of section 2-107 shall not apply to:

(a) Normal or accepted veterinary or veterinary hospital practices or treatment of animals under active veterinary care;

(b) Bona fide experiments carried on by commonly recognized research facilities;

(c) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;

(d) Rodeo practices accepted by the rodeo cowboys' association;

(e) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or by an authorized agent such as a licensed veterinarian, at the request of the owner;

(f) The humane killing of an animal by the animal control officer, a public health officer or a law enforcement officer in the performance of his or her official duty;

(g) The humane killing of an unclaimed animal after three full business days following the receipt of such animal at a municipal pound or an incorporated humane society shelter by the owner, operator or authorized agents of such establishments. (Code 1990)

2-109. KEEPING ANIMALS. It shall be unlawful for the owner, lessee, occupant or person in charge of any premises in the city to possess and maintain any animal or fowl within the city or permit to be maintained thereon any stable, shed, pen or other place where horses, mules, cattle, sheep, goats or swine, or undomesticated animals are kept. This provision shall not apply to:

(a) The maintaining of a stockyard or sales barn for the loading, unloading, temporary detention and sale of such livestock, if the location of such stockyard or sales barn does not otherwise violate the zoning ordinances of the city;

(b) The maintaining of dogs which are regulated by Article 2 of this chapter;  
(c) The maintaining of non-poisonous and non-vicious animals and fowl which are commonly kept as household pets, such as cats, hamsters, rabbits, parakeets, and comparable animals, when kept as household pets and in a safe and sanitary manner in accordance with section 2-113 of this chapter;

(d) The transporting of animals through the city by ordinary and customary means;

(e) Farms and Ranches zoned "A-L" Agricultural District or Animal Husbandry is allowed in "R-S"-Residential Suburban District.

(Ord. 020-1987-039, Secs. 3, 5; Code 2003)

(f) Limited raising and care of domestic fowl is permitted in "R-1" Single Family Residential and "R-2" Two Family Dwelling District subject to the following conditions:

- Domestic fowl shall not be kept for commercial purposes.
- Domestic fowl shall be properly sheltered and proper sanitation shall be maintained at all times.
- It shall be unlawful to permit fowl of any kind to run at large within the corporate limits of the City of Hesston.
- Up to eight domestic fowl may be kept on any lot with the following exceptions:
  - On lots greater than 10,000 square feet, one additional fowl is permitted for every 1,000 square feet over 10,000 square feet.
  - Roosters are not permitted.
  - Structures housing domestic fowl must be located at least 10 feet away from any structure housing a dwelling unit.

(Ord. 020-2013-150)

2-110. ANIMAL TRAPS. It shall be unlawful for any person to use, place, set out, or deploy any animal trap aboveground, which makes use of a spring gun, spring jaws, clamping devices, cutting or stabbing mechanism or any other devices that will damage or severely injure any animal when caught or trapped by the device or trap; except that nothing herein contained shall prohibit the use of animal traps that are so designed to trap and hold animals without injuring the animals.  
(Ord. 020-1987-039, Sec. 7; Code 1990)

2-111. NUISANCE; ANIMAL ACTIVITIES PROHIBITED. It shall be unlawful for the owner of any animal to keep or maintain such animal in the city so as to constitute a nuisance. For the purpose of this section, "nuisance" is defined as any animal which:  
(a) Molests or interferes with persons in the public right-of-way;  
(b) Attacks or injures persons, or other domestic animals;  
(c) Damages public or private property other than that of its owner or harborer by its activities or with its excrement;  
(d) Scatters refuse that is bagged or otherwise contained;  
(e) Causes any condition which threatens or endangers the health or well-being of persons or other animals.

If a summons is issued charging violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.

(Ord. 020-1987-039, Secs. 8, 17; Code 1990)

2-112. NOISY ANIMALS. The keeping, or harboring of any animal which by loud, frequent and habitual barking, howling, yelping, mewing, roaring or screeching shall

disturb the peace of any neighborhood is hereby prohibited. It shall be the duty of any person harboring or keeping such loud or noisy animal or animals to abate the condition, and if he or she fails to do so, the city may abate it by taking up, impounding and/or disposing of the animal at the expense of the owner.

(Ord. 020-1987-039, Sec. 8; Code 1990)

2-113.

ANIMAL CONFINES; SHELTERS. (a) It shall be unlawful for any person to keep or maintain any animal in any yard, structure or area that is not clean, dry and sanitary, free from debris and offensive odors that annoy any neighbor, and devoid of rodents and vermin.

(b) Excrement shall be removed at least once each week from any animal shelter, pen or yard area where animals are kept, or more often if necessary to prevent or control odors, fly breeding, or rodent infestation. If excrement is stored on the premises by any animal owner, it shall be stored in adequate containers with fly-tight lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(c) All animal shelters, pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.

(d) All animals shelters and board fences confining animals shall be maintained in good repair, and all animal shelters and board fences confining animals subject to residential and commercial classification shall be protected from deterioration by painting or comparable treatment.

(e) Barbed wire fences and electrically charged fences shall not be permitted for animal confines except on properties for which an agricultural classification permit is held or where the barbed wire fence or electrically charge fence is protected by an exterior fence.

(f) All premises on which animals are kept shall be subject to inspection by the animal control officer, duly authorized law enforcement officer, or public health official.

If the officer or official determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he or she shall notify the owner of the animals in writing to correct the sanitation deficiencies within 24 hours after notice is served on the owner. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected. (Code 1990)

2-113A.

SAME; STOCKYARDS; COMMERCIAL HOLDING PENS. Animal shelters owned or operated as a stockyard or commercial holding pen shall be adequately maintained and cleaned as often as is necessary, as determined by the health officer, to control fly breeding or to control other conditions adversely affecting the public health including the following:

(a) Collected fecal material and other solid organic waste shall be disposed of at a sanitary landfill, fertilizer processing plant, or by proper dispersal on land used for agricultural purposes.

(b) Grain or protein feed shall be stored in tightly covered rodent-proof metal containers or rodent-proof bins.

(c) Premises subject to the terms of this section shall be maintained free of rodent harborage and in accordance with sections 8-601:608 of this code.

(d) Wherever reasonable, use shall be made of anti-coagulant rodenticides for the control of rodents and organo-phosphorus insecticides for the control of flies or any other effective chemical means for the control of rodents and flies.

(e) Wherever reasonable, use shall be made of soil sterilants and herbicides or other effective means for the control of weeds and grass around structures and buildings.

(f) Enclosures including fences where animals such as horses, cows, sheep and goats are maintained shall be constructed in a manner, using dimension lumber materials, or other effective means to prevent such animals from breaking out or causing hazard to persons or property.

(g) The solid wastes accumulated from the cleaning of animal shelters and holding pens maintained by persons subject to a residential classification permit as herein provided shall be stored in metal containers, with tight-fitting metal lids, and all such stored or accumulated wastes shall be disposed or at least once each week.

(h) Holding lots, pens and floors of sheds and buildings where animals are held and which are maintained by persons subject to a commercial, industrial or agricultural classification permit according to the terms of this chapter shall be surfaced with concrete or asphaltic materials and that the drainage system of such surfaced areas shall include proper retaining walls and traps to control the waste from draining into watercourses and such drainage system shall be subject to the approval of the health officer. The health officer shall waive this standard for domestic animal holding operations where such animal holding is longer than 24 hours for any domestic animal involved or where dirt lots are more appropriate to the proper care of cattle, horses or sheep.

(i) Solid wastes accumulated from the cleaning of animal shelters and holding pens maintained by persons subject to a commercial, industrial or agricultural permit according to the terms of this chapter shall be stored on concrete slabs or other facilities, such as dirt lots on which is stockpiled manure with an exposed perimeter as approved by the health officer; provided that all solid waste shall be properly disposed of at least once each week or as may be approved by the city.  
(Code 1990)

2-114. DEATH OF ANIMALS. All dead animals shall be disposed of by the owner or keepers within 24 hours of the animal's death, by burial, incineration in a facility approved by the animal control officer, by rendering or by other lawful means approved by the animal control officer. No dead animal shall be dumped on any public or private property. (Ord. 020-1987-039, Sec. 6; Code 1990)

2-115. VICIOUS ANIMALS. (a) Prohibited: It shall be unlawful for any person to keep, possess or harbor a vicious animal within the city. Impoundment of animals whose owners have been cited for violation of this section shall be at the discretion of the animal control officer. If the animal presents a clear and present danger to the public health or safety, it shall be the duty of the animal control officer or his or her agent to impound such animal.

(b) Defined: For purposes of this chapter a vicious animal shall include:

(1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(2) Any animal which attacks a human being or domestic animal without provocation;

(3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting;



(4) Any animal which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such animal to attack, any law enforcement officer while such officer is engaged in the performance of official duty.

(c) Complaint: Whenever a sworn complaint is filed in the municipal court against the owner of an animal alleging that such animal is vicious and in violation of this section, the municipal judge shall hold a hearing to determine whether or not the animal is vicious within the meaning of this section and thereby in violation of this section. The owner of the animal shall be notified in writing of the time and place of the hearing at least one week prior to the hearing. In making a determination, the municipal judge shall consider the following:

- (1) The seriousness of the attack or bite;
- (2) Past history of attacks or bites;
- (3) Likelihood of attacks or bites in the future;
- (4) The condition and circumstances under which the animal is kept or confined;
- (5) Other factors which may reasonably relate to the determination of whether or not the animal is vicious.

The municipal judge shall order the impoundment, the muzzling in accordance with subsection (d) and/or the confinement of the animal accused of being in violation of this section in a manner and location that will insure that it is no threat to persons or other animals pending the outcome of the hearing. If such impoundment, muzzling or otherwise safe confinement is not possible or if prior court orders to restrain such animal have gone unheeded, the municipal judge may order the animal immediately destroyed.

(d) Vicious Dogs to be Muzzled: It shall be the duty of every owner, keeper or harborer of any dog in the city, which dog is vicious or has been known to bite, chase, or run after any person or animal in the streets, alleys, or any public place in the city, to keep the same muzzled with a good and sufficient wire or leather muzzle, securely fastened so as to wholly prevent such dog from biting any animal or person until such time as a determination has been made by the court as to whether the dog is vicious or not. Any person owning, keeping or harboring any dog within the city limits contrary to this section shall be guilty of a violation of this code.

(e) Immediate Destruction: Nothing in this chapter shall be construed to prevent the animal control officer or any law enforcement officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any vicious animal without notice to the owner.

(f) Release of: If a complaint has been filed in the municipal court against the owner of an impounded animal for a charge under this section, the animal shall not be released except on the order of the municipal judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The municipal judge may, upon making a finding that an animal is vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner by the animal shelter. Surrender of an animal by the owner thereof to the animal control officer does not relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.

(Ord. 020-1987-039, Secs. 4, 9; Code 1990)

2-116. RUNNING AT LARGE. (a) It shall be unlawful for any person to willfully allow any animal or fowl under his or her control to be or to run at large within the city. Any animal or fowl found at large shall be impounded as provided in section 2-117 or 2-206 (dogs).

(b) The owner of any dog or cat impounded for running at large without the tag required by section 2-202 shall, for the first offense, pay a fine of \$15 plus the board bill; for the second offense a fine of \$20 plus the board bill; for a third and subsequent offenses a court appearance is required.

(c) For the first offense of an animal running at large with a tag as required by section 2-202, the owner or harbinger claiming any animal, shall, in addition to presenting a registration receipt, pay the cost of the board bill. For a second offense, the owner or harbinger shall pay a fine of \$20 plus the board bill. For a third and all subsequent offenses a court appearance is required.

(Ord. 020-1987-039, Sec. 1; Code 1990)

2-117. IMPOUNDMENT; FEE; NOTICE; RECORD. (a) The animal control officer or law enforcement officer shall impound any animal or fowl found at large in the city or constituting a nuisance or otherwise in violation of this chapter in a suitable pound or enclosure provided or contracted for by the city. The impounding officer shall make diligent inquiry as to the owner of the animal and shall notify the owner thereof of such impoundment as soon as reasonably possible.

(b) The city shall be entitled to receive from such owner an impoundment fee of \$15 plus the actual cost of feeding and maintaining the animal while impounded.

(c) In case the identity of the owner of the impounded animal or fowl cannot be ascertained, the animal control officer or police officer shall, upon taking any such animal into custody and impounding the same, make a record thereof, with a description of the animal and the date and place taken into custody and the place of impounding.

(d) A record of all dogs or cats impounded shall be kept by the city containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment.

(Code 1990)

2-118. IMPOUNDMENT OF RABIES SUSPECTS. (a) Any law enforcement officer or animal control officer may take up, upon private or public property, any animal which has bitten or scratched a person or other animal and impound the animal in the city pound, securely penned and separated from other animals, or in a veterinary hospital or animal care facility for a period of not more than 30 days during which time the animal control officer shall determine whether or not such animal is suffering from a disease and, if not, the animal control officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefore. The animal control officer may authorize the keeping of any such animal on the owner's premises if the owner produces a rabies vaccination certificate showing that the animal has valid rabies vaccination protection. Impoundment costs shall be borne by the owner. If in the opinion of the county health officer or local veterinarian symptoms develop justifying a microscopic examination, then the animal shall be killed and examination made by the state board of health.

(b) In lieu of the provisions of subsection (a), the owner of any such animal may, at his or her own expense, take such animal to any duly qualified and licensed veterinarian in the city for observation. Such veterinarian shall report his or her

findings in writing to the animal control officer. If in the opinion of such veterinarian a microscopic examination is justified, then the animal may be turned over to the animal control officer or any law enforcement officer to be killed and examination made by the state board of health.

(c) Any animal desired for observation by the animal control officer under this section shall be delivered to the animal control officer or any law enforcement officer upon demand and shall not be withheld, hidden or harbored. Any person violating this provision shall be guilty of a violation of this code. Upon refusal of any person to so deliver such animal, the municipal judge shall cause a warrant to be issued for the arrest of such person, which warrant shall also provide for the surrender of the animal and shall be lawful authority for the apprehending and forcible taking of such animal. (Code 1990)

2-119. ANIMALS BITTEN BY RABID ANIMALS. Whenever a dog, cat or other animal is bitten by a rabid animal or an animal later proved to have been rabid, it shall be the duty of the owner of the animal that is bitten, to report that fact to the police department. It shall also be the duty of the owner of the bitten animal to either destroy or have his or her bitten animal destroyed unless:

(a) The animal which was bitten had been vaccinated against rabies at least three weeks before being bitten and has a current vaccination; and

(b) If the bitten animal has a current vaccination, it shall be confined for 90 days; and

(c) The bitten animal shall be released from confinement only upon written order from the local health officer, who declares the animal to be free of rabies; and,

(d) If the animal is found to have contracted rabies during confinement, it shall be properly disposed of.

(Code 1990)

2-121. VEHICULAR ACCIDENTS INVOLVING ANIMALS. Any person who as the operator of a motor vehicle strikes any domestic animal shall stop at once and shall immediately report such injury or death to the owner of such animal, or in the event that the owner cannot be ascertained, and located, the operator shall at once report the accident to the animal control officer or any law enforcement officer.

(Code 1990)

2-122. EMERGENCY; PROCLAMATION. The chief of police is hereby authorized whenever in his or her opinion the danger to the public safety from rabid animals is made imminent to issue a proclamation ordering all persons owning any animal in the city to confine the animal in a good and sufficient enclosure from which the animal cannot escape, or fasten such animal by means of a chain on the premises where the owner may reside, for such time as may be specified in such proclamation. Any animal not confined during such time may be disposed of wherever found by any police officer, or the animal control officer of the city. The owner of such animal shall be prosecuted for such violation thereof.

(Ord. 020-1987-039, Sec. 19; Code 2003)

2-123. KENNEL LICENSES. (a) No person or household shall own or harbor more than four dogs of six months of age or older or more than one litter of pups, or more than four cats of more than six months of age or more than one litter of kittens, or more than a total of four dogs and cats more than six months of age in any combination, or engage in the commercial business of breeding, buying selling,

trading, training, or boarding cats or dogs or both cats and dogs, without having obtained a kennel license from the city clerk.

(b) Kennel licenses must be renewed annually. No kennel license shall be issued until an inspection certificate has been issued by the animal control officer certifying approval of the kennel and compliance with the applicable laws of the city and the State of Kansas, and a certificate by the zoning code enforcement officer has been issued certifying that the applicant for the kennel license is not violating zoning laws of the city. If the city clerk has not received any protest against the kennel, the city clerk may issue a renewal of an existing kennel license at the same location without any report from the animal control officer and zoning code enforcement officer. If the animal control officer or the zoning code enforcement officer finds that the holder of any kennel license is violating any zoning law, or any other law of the State of Kansas, or of the city, or is maintaining the facility in a manner detrimental to the health, safety or peace of mind of any person residing in the immediate vicinity, he or she shall report such fact to the city clerk, and the license shall not be renewed except after a public hearing before the governing body.

(c) The animal control officer, the zoning enforcement officer, or any law enforcement officer shall have the right to inspect any premises licensed under this section at any reasonable time and nothing shall prevent the entry onto private property for the purpose of inspection. The application for a kennel shall constitute consent to such entry and inspection.

(d) The governing body may suspend or revoke a kennel license if, pursuant to a public hearing, it finds any of the following:

(1) The kennel is maintained in violation of any applicable law of the State of Kansas, or of the city.

(2) The kennel is maintained so as to be a public nuisance.

(3) The kennel is maintained so as to be detrimental to the health, safety or peace of mind of persons residing in the immediate vicinity.

(e) The annual kennel license fee shall be \$100. Payment of such license fee is in addition to, and not in lieu of, the dog license fees otherwise required under this chapter.

(f) This section shall not apply to and will not be construed to require a kennel license for a licensed veterinarian to operate an animal hospital.

(Code 1990)

2-124. PICKETING ANIMALS ON PUBLIC PROPERTY. It shall be unlawful for any person owning, harboring or having in his or her custody any animal to picket it upon any public property. (Ord. 020-1987-039, Sec. 2)

2-125. PROHIBITION ON OWNERSHIP, KEEPING, OF CERTAIN DOG BREEDS.

(a) It shall be unlawful to keep, harbor, own, or in any way possess within the city limits the following dog breeds:

(1) Staffordshire bull terrier;

(2) American pit bull terrier;

(3) Any dog which has the appearance and characteristics of being predominately of Staffordshire bull terrier, American bull terrier, or a combination of these breeds.

(4) Rottweiler;

(b) Any dog which has the appearance and characteristics of being predominately Rottweiler.

(c) Any of the above prohibited dogs registered with the city on the date of publication of this ordinance may be kept within the city limits subject to the standards and requirements set forth in section 2-126.

(d) There shall be a presumption that any dog registered with the city as a “pit bull”, “pit bull mix”, “Rottweiler”, or “Rottweiler mix” is in fact a dog defined in Section 2-125(a) above.

(Ord. 20-2005-118; Code 2007)

2-126.

STANDARDS FOR KEEPING CERTAIN DOG BREEDS; POTENTIALLY DANGEROUS AND VICIOUS DOGS. (a) The following standards shall apply to all dogs prohibited in Section 2-125 but allowed within the City due to timing of the ordinance; and also to potentially dangerous and vicious dogs as defined in Section 2-115.

(1) Leash and Muzzle. - No person shall permit these dogs to go outside their kennel or pen unless such dogs are securely leashed with a leash no longer than four feet in length. No person shall permit these dogs to be kept on a chain rope or other type of leash outside their kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all such dogs on a leash outside the animal’s kennel must be muzzled by a muzzling device sufficient to prevent such animal from biting persons or other animals.

(2) Confinement. - These dogs shall be securely confined indoors or in a securely enclosed and locked pen, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and secure top attached to the sides. All structures used to confine these dogs must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground not less than two feet.

(3) Confinement Indoors. - None of these dogs may be kept on a porch, patio or in any part of a house or structure that would allow the dogs to exit such a building on its own volition. In addition, no such dog 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.

(4) Signs. - All owners, keeper or harborers of these dogs within the City shall within 10 days of the effective date of this ordinance display in a prominent place on their premises a sign easily readable by the public using the words Beware of Dog. In addition, a similar sign is required to be posted on the kennel or pen of such animal.

(5) Insurance. - All owners, keepers or harborers of these dogs must within 21 days of the effective date of this ordinance provide proof to the City Clerk of public liability insurance in a single incident amount of \$50,000 for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such an animal. Such insurance policy shall provide that no cancellation of the policy will be made unless 10 days written notice is first given to the City Clerk.

(6) Identification Photographs. - All owners, keepers or harborers of these dogs must within 10 days of the effective date of this ordinance provide to the City Clerk two color photographs of the registered animal clearly showing the color and approximate size of the animal.

(7) Reporting Requirements. - All owners, keepers or harborers of these dogs must within 10 days of the incident, report the following information in writing to the City Clerk as required hereafter:

(A) The removal from the city or death of the dog;

(B) The new address of the dog owner or keeper should the owner move within the corporate city limits.

(8) Sale or Transfer of Ownership Prohibited. Sale – No person shall sell, barter, or in any way dispose of these dogs to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such dog; provided that the registered owner of these dogs may sell or otherwise dispose of a registered dog or offspring of such dog to persons who do not reside in the City.

(9) Animals Born of Registered Dogs. All offspring born of dogs prohibited in section 3 must be removed from the city within 10 weeks of the birth of such animal.

(10) Violations and Penalties. Any person violating or permitting the violation of any provisions of this section shall upon conviction in municipal court be fined a sum not less than \$100.00 and not more than \$1,000.00. In addition to the fine imposed the court may sentence the defendant to imprisonment in the county jail for a period of not to exceed 30 days. In addition, the court shall order the registration of the subject dog revoked and the dog removed from the City. Should the defendant refuse to remove the dog from the City the municipal court judge shall find the defendant owner in contempt and order the immediate confiscation and impoundment of the animal. Each day that a violation of this section continues shall be deemed a separate offense. In addition to the foregoing penalties, any person who violates this article shall pay all expenses, including shelter, food, handling, veterinary care and testimony necessitated by the enforcement of this article.

(Ord. 020-2005-118; Code 2007)

## ARTICLE 2. DOGS AND CATS

2-201. REGISTRATION AND VACCINATION REQUIRED; FEE. (a) Every owner of any dog or cat over six months of age shall annually register with the city clerk, or the Clerk's designated agent, his or her name and address with the name, sex and description of each dog or cat owned and kept within the city. It shall be unlawful for the owner of any newly acquired dog or cat or any dog or cat brought into the city to fail to register such animal within 30 days from acquisition or bringing the dog or cat into the city. It shall be unlawful for the owner of any previously registered dog or cat to fail to maintain current registration of such dog or cat.

(b) Upon registration, the owner shall present a current, completed certificate of immunization against rabies. No registration shall follow without evidence of this document, and it shall be unlawful for the owner of any dog or cat over six months of age to fail to maintain effective rabies immunization of such dog or cat.

(c) The city clerk shall collect an annual registration fee of \$20.00 for each dog or cat.

(d) The registration and licensing tax shall be due and payable within three days after a dog or cat is brought into the city or arrives at the age of six months. All licenses shall expire one year from the date issued.

(Ord. 020-2023-183, Sec. 2-201)

2-202. DOG AND CAT TAGS. It shall be the duty of the city clerk or designated agent, upon a showing of current rabies immunization and receipt of the registration fee hereinbefore required, to keep in a book suitable for the registration of dogs or cats, the time of the registration, the name of the owner or keeper, the number of the registration and the amount paid therefor, and shall deliver to the owner or keeper of the dog or cat a certificate in writing, stating that the person has registered the dog or cat and the number by which the dog or cat is registered, and shall also deliver to the owner or keeper of the dog or cat a tag with the registration number and the registration year thereon, which shall be, by the owner or keeper, attached to the collar to be used on the dog or cat so registered. When any tag has become lost during a registration period, the owner of the dog or cat may request a duplicate tag for the remainder of the registration period. When so requested, the city clerk shall, upon presentation of the registration certificate, issue a duplicate of such tag upon the payment of a \$2.00 fee. It shall be unlawful for any person to take off or remove the city registration tag from any dog or cat belonging to another, or remove the strap or collar on which the same is fastened.

(Ord. 020-1987-039, Sec. 28; Code 1990)

2-203. SAME; COUNTERFEIT TAG. It shall be unlawful for any person to place on any dog or cat a tag issued for any other dog or cat or to make or use any false, forged or counterfeited tag or imitation thereof. (Code 1990)

2-204. EVIDENCE OF VACCINATION. It shall be unlawful for the owner of any dog or cat kept within the city to fail to display a current certificate of immunization against rabies issued by an accredited veterinarian evidencing the vaccination of such dog or

cat, when requested by the animal control officer or any law enforcement officer.  
(Code 1990)

2-205. VISITING DOGS OR CATS. The provisions of this article with respect to registration shall not apply to any dog or cat owned by any person visiting or temporarily remaining within the city for less than 30 days. However, such dogs or cats shall be kept under restraint by the owner thereof at all times.  
(Ord. 020-1987-039, Sec. 30; Code 1990)

2-206. IMPOUNDMENT; RECORD; NOTICE; REDEMPTION; MINIMUM FEE. (a) Any dog or cat found in violation of the provisions of this article shall be subject to impoundment by the city.

(b) A record of all dogs or cats impounded shall be kept by the city containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment.

(c) No dog or cat impounded under this section shall be disposed of until after expiration of a minimum of three full business days of custody during which the public has clear access to inspect and recover the dog or cat through time periods ordinarily accepted as usual business hours. During such time of custody, the city shall attempt to notify the owner or custodian of any dog or cat impounded by such facility if the owner or custodian is known or reasonably ascertainable. Such dog or cat may at any time be released to the legal owner, moved to a veterinary hospital for treatment or observation, released in any manner, if such dog was a gift to the animal shelter, or euthanized by a licensed veterinarian if it appears to the veterinarian that the dog or cat is diseased or disabled beyond recovery. If within three full business days the owner does not appear to claim the dog or cat, then the dog or cat may be sold, euthanized or otherwise disposed of.

(d) If at any time before the sale or destruction of any dog or cat impounded under the provisions of this article, the owner of an impounded dog or cat does appear and redeem the dog or cat, it shall be turned over to the person claiming it upon payment of any impoundment fees or penalties plus the actual costs of impoundment, and shall not apply to any dog or cat alleged as being vicious under section 2-115 or suspected of rabies under section 2-119 of this code.

(e) The minimum impoundment fee shall be \$15.00. If a dog or cat is impounded for more than 24 hours, the owner will be billed the current boarding rates incurred by the City for each day beyond 24 hours. The owner is required to pay all incurred fees prior to the animal's release.

(f) Any dog or cat impounded may not be released without a current rabies vaccination and a license issued by the city.

(g) Impoundment hereunder shall not preclude any court from imposing and executing any fine which might otherwise be levied under this article for violation of any of the provisions thereof; nor shall impoundment be a defense in any prosecution commenced hereunder.

(h) The redemption of any dog or cat impounded for a violation of any provision of



this chapter shall be prima facie evidence of the violation of such provision by the person redeeming the dog or cat.

(Ord. 020-2023-183, Sec. 2-206)

2-207. DISPOSITION OF UNCLAIMED DOGS. (a) If any dog or cat is not redeemed by its owner or harborer within the time allowed for redemption as specified in section 2-206 thereof, the animal control officer, any authorized law enforcement officer, any authorized veterinarian or any duly authorized pound personnel may destroy such dog or cat or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year.

(b) No dog or cat may be transferred to the permanent custody of a prospective owner unless:

(1) Such dog or cat has been surgically spayed or neutered before the physical transfer of the dog or cat occurs; or

(2) the prospective owner signs an agreement to have the dog or cat spayed or neutered and deposits with the city not less than the lowest nor more than the highest cost of spaying or neutering in the community as determined by the city. Any funds deposited pursuant to such an agreement shall be refunded to such person upon presentation of a written statement signed by a licensed veterinarian that the dog or cat has been spayed or neutered. If such person does not reclaim the deposit within six months after receiving custody of the dog or cat, the city shall keep the deposit and may reclaim the unspayed or unneutered dog or cat.

(c) Nothing in this section shall be construed to require sterilization of a dog or cat which is being held by the city and which may be claimed by its rightful owner within the holding period established in section 2-207.

(Code 2003)

2-208. CONFINEMENT OF DOGS OR CATS IN HEAT. Any unspayed female dog or cat in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure, and the area of enclosure shall be so constructed that no other dog or cat or dogs or cats may gain voluntary access to the confined animal except for purposes of planned breeding. Any animal that is in the state of estrus (heat) and that is not properly confined, or any such animal that is creating a neighborhood nuisances, shall be removed to a boarding kennel, to a veterinary hospital or to the animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner. The owner of animals removed to the animal shelter shall be charged at the rate established from time to time by the animal shelter for routine confinement. (Ord. 020-1987-039, Sec. 24; Code 1990)

2-209. MUZZLING. Whenever the mayor shall deem it necessary for the protection and welfare of the inhabitants of the city, he or she shall issue an order requiring all dogs or cats kept within the city to be effectively muzzled for such length of time as may be specified in the order, to prevent them from biting or injuring persons or animals. Such order shall be published in the official newspaper of the city for such period of time as the mayor may deem necessary. (Code 1990)

### ARTICLE 3. OTHER ANIMALS

2-301.

EXOTIC ANIMALS. (a) It shall be unlawful for any person, firm or corporation to keep, maintain or have in his or her possession or under his or her control within the city any poisonous reptile or any other dangerous wild animal or reptile, any vicious or dangerous animal or any other animal or reptile of wild, vicious or dangerous propensities.

(b) It shall be unlawful for any person to keep, maintain or have in his or her possession or under his or her control within the city any of the following animals:

- (1) All poisonous animals including rear-fang snakes.
- (2) Apes: Chimpanzees; gibbons; gorillas, orangutans; and siamangs.
- (3) Baboons.
- (4) Badgers.
- (5) Bears.
- (6) Bison.
- (7) Bobcats.
- (8) Cheetahs.
- (9) Crocodilians, 30 inches in length or more.
- (10) Constrictor snakes, six feet in length or more.
- (11) Coyotes.
- (12) Deer; includes all members of the deer family, for example, white-tailed deer, elk, antelope and moose.
- (13) Elephants.
- (14) Game cocks and other fighting birds.
- (15) Hippopotami.
- (16) Hyenas.
- (17) Jaguars.
- (18) Leopards.
- (19) Lions.
- (20) Lynxes.
- (21) Monkeys.
- (22) Ostriches.
- (23) Pumas; also known as cougars, mountain lions and panthers.
- (24) Raccoons.
- (25) Rhinoceroses.
- (26) Skunks.
- (27) Tigers.
- (28) Wolves.

(c) The prohibitions of this section shall not apply to bona fide pet shops, zoos, circuses, carnivals, educational institutions, or medical institutions, if:

- (1) Their location conforms to the provisions of the zoning ordinance of the city.
- (2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.
- (3) Animals are maintained in quarters so constructed as to prevent their escape.

(d) The municipal judge shall have the authority to order any animal deemed vicious confined, destroyed or removed from the city.

(Code 1990)

## CHAPTER III. BEVERAGES

- Article 1. General Provisions
- Article 2. Cereal Malt Beverages
- Article 3. Alcoholic Liquor
- Article 4. Private Clubs

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### ARTICLE 1. GENERAL PROVISIONS

3-101. DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section:

(a) Alcohol - means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) Alcoholic Liquor - means 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, but shall not include any cereal malt beverage.

(c) Cereal Malt Beverage - means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

(d) Enhanced Cereal Malt Beverage - means cereal malt beverage as that term is defined herein, and such term includes 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;

(e) Class A Club - means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, 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.

(f) 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 and/or alcoholic beverages and for entertainment.

(g) Club - means a Class A or Class B club.

(h) General Retailer - means a person who has a license to sell enhanced cereal malt beverages at retail.

(i) Limited Retailer - means 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 premises.

(j) Place of Business - Any place at which enhanced cereal malt beverages or alcoholic beverages or both are sold.

(k) Wholesaler or distributor - Any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, copartnerships, corporations and associations authorized by this chapter to sell enhanced cereal malt beverages at retail. (Ordinance No. 020-2019-170)

3-102. RESTRICTION ON LOCATION. (a) No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within 200 feet of any public or parochial school or college or church, except that if any such school, college or church is established within 200 feet of any existing licensed premises, the premises shall be an eligible location for retail licensing, said distance to be measured from the nearest property line of such public or parochial school, college or church, to the nearest portion of the building occupied by the premises.

(b) The distance location of subsection (a) above shall not apply to a club, when the license or permit applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

(c) No license or permit shall be issued for the sale of alcoholic liquor if the building or use does not meet the zoning ordinance requirements of the city or conflicts with other city laws, including building and health codes. (K.S.A. 41-710; Code 2007)

3-103. MINORS ON PREMISES. (a) It shall be unlawful for any person under the age of 21 years to remain on any premises where the sale of alcoholic liquor is licensed for on-premises consumption.

(b) It shall be unlawful for the operator, person in charge or licensee of any premises licensed for on-premises consumption of alcoholic liquor to permit any person under the age of 21 years to remain on the premises.

(c) This section shall not apply if the person under the age of 21 years is accompanied by his or her parent or guardian, or if the licensed or permitted premises derives not more than 50 percent of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises consumption. (Code 1990)

3-104. CONSUMPTION ON PUBLIC PROPERTY. No person shall drink or consume any alcoholic liquor or cereal malt beverages on city owned public property except cereal malt beverages on property designated as Hesston Municipal Golf Park. (K.S.A. Supp. 41-719)

3-105. PUBLIC SALE; CONSUMPTION. (a) It shall be unlawful for any person to sell, serve or dispense any cereal malt beverage or alcoholic beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the city.

(b) It shall be unlawful for any person to drink or consume any cereal malt beverage or alcoholic beverage in any public place not licensed to sell and serve such

beverage for public consumption at such public place within or under the jurisdiction of the city.

(c) For purposes of this section, the term "public place" shall include upon any street, public thoroughfare, public parking lot or any privately owned parking area made available to the public generally, within any parked or driven motor vehicle situated in any of the aforesaid places or upon any property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 *et seq.* if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to Chapter 27 of the Kansas Statutes Annotated. (K.S.A. 41-719; Code 1990)

3-106. OPEN CONTAINER. (a) It shall be unlawful for any person to transport in any vehicle upon a highway or street any cereal malt beverage or alcoholic beverage unless such beverage is:

(1) In the original, unopened package or container, the seal of which has not been broken and from which the original cap or cork or other means of closure has not been removed;

(2) In the locked, rear trunk or rear compartment or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion or;

(3) In the exclusive possession of a passenger in a vehicle which is a recreational vehicle as defined by K.S.A. 75-1212 or a bus as defined by K.S.A. 8-1406, who is not in the driving compartment of such vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.

(b) As used in this section "highway" and "street" have meanings provided by K.S.A. 8-1424 and K.S.A. 8-1473 and amendments thereto. (K.S.A. 8-1599; Code 2003)

3-107. CONSUMPTION WHILE DRIVING. It shall be unlawful for any person to consume any cereal malt beverage or alcoholic beverage while operating any vehicle upon any street or highway. (K.S.A. 41-719, 41-2720; Code 1990)

3-108. IDENTIFICATION CARD. (a) It shall be unlawful for any person to:

(1) Display, cause or permit to be displayed, or have in possession, any fictitious, fraudulently altered, or fraudulently obtained identification card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.

(2) Display or represent any identification card not issued to such person as being his or her card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.

(3) Permit any unlawful use of an identification card issued to a person for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.

(4) Photograph, photostat, duplicate or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, photostat, duplicate, reproduction or facsimile for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.

(b) It shall be unlawful for any person to:

(1) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any alcoholic liquor.

(2) Lend any identification card to or knowingly permit the use of any identification card by any person under the legal age for consumption of cereal malt beverage for use in the sale, purchase or consumption of any cereal malt beverage.  
(Code 1990)

3-109. UNDERAGE PURCHASER. (a) It shall be unlawful for any person under 21 years of age to purchase or attempt to purchase any cereal malt beverage.

(b) It shall be unlawful for any person under 21 years of age to purchase or attempt to purchase any alcoholic liquor.  
(K.S.A. 41-715, 41-2721; Code 1990)

## **ARTICLE 2. CEREAL MALT BEVERAGES**

3-201. LICENSE REQUIRED OF RETAILERS.

(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.

3-202. APPLICATION AND PROCEDURES. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license.

(a) The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain the information required by K.S.A. 41-2702 as from time to time amended, including successor provisions thereto;

(b) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter VIII of this Code.

(c) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter VII of this Code. The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the governing body not later than five working days subsequent to the receipt of such application.

(d) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.

(e) The city clerk's office shall attempt to notify the applicant of an existing license 30 days in advance of its expiration.

(f) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the city-county health department, when they are received. The police department will run a records check on all applicants and the fire department and health department will inspect the premises in accord with chapters 7 and 8 of this code. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

(g) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.

(h) An applicant who has not had an enhanced cereal malt beverage license in the city shall use its best efforts to attend the governing body meeting when the application for a new license will be considered.

3-203. LICENSE GRANTED; DENIED.

(a) The journal of the governing body shall show the action taken on the application.

(b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.

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

(d) Among other things, the license shall state that it is not transferable and the calendar year for which issued. The license shall be kept posted in a conspicuous place in the place of business. Should the holder of such license change his or her place of business from one location to another during the year for which such license was issued, a new license may be issued by the governing body of the city without an additional license fee upon proper application having been made and granted therefor and upon the surrender of the original license by the holder thereof.

(e) In the event a licensee shall change managers during the term of its license, it shall immediately file with the city clerk a statement setting forth the name and address of the new manager and the information required by section 3-202.

(f) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

3-204. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

3-205. LICENSE, DISQUALIFICATION. No license shall be issued to a person or entity other than in accordance with the terms of K.S.A. 41-2703 and 41-2703a as from time to time amended, including successor provisions thereto.

3-206. RESTRICTION UPON LOCATION.

(a) No license shall be issued for the sale at retail of any enhanced cereal malt beverage on premises which are located in areas not zoned for such purpose.

(b) It shall be unlawful to sell or dispense at retail any enhanced cereal malt beverage at any place within the city limits that is within 200 feet of any public or parochial

school or college or church, except that if such school, college, or church is established within 200 feet of any existing licensed premises, the premises shall be an eligible location for retail licensing.

(c) Provisions of this section shall not apply to any establishment holding a private club license issued by the State of Kansas.

(d) The distance limitation of subsection (b) above shall not apply to any establishment holding an enhanced cereal malt beverage license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation. The governing body shall grant such a waiver only following public notice and hearing.

3-207. LICENSE FEE. The rules and regulations regarding license fees shall be as follows:

(a) General Retailer - for each place of business selling enhanced cereal malt beverages at retail at any time, \$200.00 per calendar year plus required state licensing fee (\$25.00).

(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 premises, \$50.00 per calendar year plus required state licensing fee (\$25.00).

(c) Special Event Retailer – for each place of business selling enhanced cereal malt beverages at retail for a special event approved by the governing body of the City, \$25.00 per day plus required state licensing fee (\$25.00).

(d) Change of Location - if a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of \$100.00 (plus any state licensing fee). If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

Otherwise, full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued. Any retailer in possession of a duly issued and unrevoked cereal malt beverage license on April 1, 2019, shall be deemed to possess an enhanced cereal malt beverage license for the remainder of its term.

3-208. SUSPENSION OF LICENSE. The governing body of the City may, upon five days' written notice, suspend or revoke such license in accordance with the terms of K.S.A. 41-2708 as from time to time amended, including any successor provisions thereto.

3-209. 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.

3-210. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe requirements and hours of business established by K.S.A. 41-2704 as from time to time amended, including successor provisions thereto.



(a) The City has not authorized any expanded hours and has not authorized the sale of any enhanced cereal malt beverage on Sunday.

(b) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

3-211. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.  
(Ordinance No. 020-2019-170)

### **ARTICLE 3. ALCOHOLIC LIQUOR**

- 3-301. STATE LICENSE REQUIRED. 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 by the "Kansas liquor control act" within the city limits of Hesston, Kansas (Ord. 010-2005-158, Code 2007)

### **ARTICLE 4. PRIVATE CLUBS**

- 3-401. LICENSE REQUIRED. It shall be unlawful for any person granted a private club license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk. (Code 1990)

- 3-402. LICENSE FEE. (a) There is hereby levied an annual license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee for a Class A club shall be \$250.00 and the city license fee for a Class B club shall be \$250.00.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a 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, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the city club license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises. (Code 1990)

- 3-403. BUSINESS REGULATIONS.

(a) No club licensed hereunder 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.

(b) Enhanced cereal malt beverages may be sold on premises licensed for the retail sale of enhanced cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.

(c) No club membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age. (Ordinance No. 020-2019-170)

## **CHAPTER IV. BUILDINGS AND CONSTRUCTION**

- Article 1. Building Code
- Article 2. Electrical Code
- Article 3. Plumbing and Gas-Fitting Code
- Article 4. Moving Buildings
- Article 5. Dangerous and Unfit Structures
- Article 6. Heating Standards
- Article 7. Excavation Damage Prevention Program

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### **ARTICLE 1. BUILDING CODE**

4-101. INTERNATIONAL BUILDING CODE INCORPORATED. There is hereby adopted and incorporated by reference, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, the International Building Code, 2012 Edition, as recommended by the International Conference of Building Officials, such code being made as a part of the ordinances and code of the city as if the same had been set out in full herein, all as authorized and in the manner prescribed by K.S.A. 12-3009 through 12-3012 including any amendments thereto. One copy of the International Building Code, 2012 Edition, shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Hesston," and shall be filed with the city clerk to be open to inspection and available to the public at all reasonable hours of business.

Any person violating any provision of such code shall be punished as provided in section 1-116 of this code.

(Code 2003)

4-101.1. INTERNATIONAL RESIDENTIAL CODE INCORPORATED. There is hereby adopted and incorporated by reference, for the purpose of establishing rules and regulations for regulating and governing the construction, alteration, movement, enlargement, replacement, repair, equipment, location, removal and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with separate means of egress as herein provided and providing for the issuance of permits and collection of fees therefor, the International Residential Code, 2012 edition, as published by the International Code Council, such codes being made as a part of the ordinances and code of the City as if the same had been set out in full herein, all as authorized in the manner prescribed by K.S.A. 12-3009 through 12-3012 including any amendments thereto. One copy of the International Residential Code, 2012 edition shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Hesston," shall be filed with the City Clerk to be open to inspection and available to the public at all reasonable hours of business.

Any person violating any provisions of such code shall be punished as provided in Section 1-116 of this Code. (Ord. No. 130-2016-128, Sec. 1)

4-101.2. INTERNATIONAL MECHANICAL CODE INCORPORATED. There is hereby adopted and incorporated by reference, for the purpose of establishing rules and regulations for regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of mechanical systems as herein provided and providing for the issuance of permits and collection of fees therefor, the International Mechanical Code, 2012 edition, as published by the International Code Council, such codes being made as a part of the ordinances and code of the City as if the same had been set out in full herein, all as authorized in the manner prescribed by K.S.A. 12-3009 through 12-3012 including any amendments thereto. One copy of the International Mechanical Code, 2012 edition shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Hesston," shall be filed with the City Clerk to be open to inspection and available to the public at all reasonable hours of business.

Any person violating any provisions of such code shall be punished as provided in Section 1-116 of this Code. (Ord. No. 130-2016-129, Sec. 1)

4-102. BUILDING OFFICIAL; POWERS; DUTIES. (a) This and all other articles of the city relating generally to building and structures shall be administered and enforced by the city administrator or the person so designated by the city administrator. The city administrator shall act as the chief building official shall have the authority to appoint building inspectors and other assistants as may be advisable for the issuance of building permits and the inspection of building construction, remodeling, or demolition.

(b) The building inspector shall perform the following duties:

(1) Enforce all regulations relating to construction, alteration, repair, removal and demolition of building and structures;

(2) Examine all buildings in the process of erection, construction, alteration or relocation in the city for the purpose of determining whether the work is in compliance with the permit given and in compliance with the regulations of the city pertaining to such work, including zoning regulations;

(3) Keep comprehensive records of applications, of permits, of certificates issued, of inspections made, or reports rendered, and of notices or orders issued.

(4) Recommend use of new materials or modes of construction acceptable for use within the city.

(c) The building inspector shall have the following powers:

(1) Enter any building or structure or premises at any reasonable hour, whether complete or in the process of erection, to perform the duties contained in this chapter;

(2) To adopt and enforce all such prudent emergency measures as he or she may deem necessary and expedient for the public safety;

(3) May cause any work done in violation of this article to be discontinued until he or she shall have satisfactory evidence that the work will be done in accordance with the building regulations of the city, subject to the right of any builder or owner to appeal to the governing body.

(Ord. 130-1990-066, Sec. 2)

4-103. BUILDING PERMIT REQUIRED; APPLICATION; APPROVAL. (a) It shall be unlawful for any person to hereafter erect or cause to be erected within the city any building or structure of any kind, or enlarge, add to the outside dimensions thereof, or relocate any building or structure already erected or which may hereafter be erected

or remodel any building or structure within the city without first obtaining a building permit therefor from the administrative office of the city. The application for such permit shall be made and duly approved by the chief building official and the permit shall be formally issued prior to the commencement of work upon any building, structure, foundation, or fence thereof, or before the removal, relocation or remodeling of any building or structure commences.

(b) A building permit shall be issued upon an application form provided by the chief building official. Such application form shall be completed in writing and submitted for approval to the chief building official and the chief building inspector for review and approval.

An application for a building permit shall be signed by the owner or his or her duly authorized agent, or a building contractor holding a valid license issued by the city. If the permit application is for construction of a single family dwelling or a two-family dwelling unit, a plot plan showing the following information must be submitted with the completed application form:

(1) A drawing of the proposed structure drawn to scale with sufficient clarity to indicate the location of the structure on the lot(s).

(2) The set back measurements of the structure.

(3) The type of structure (single family, or two-family dwelling) along with the height, width and exterior dimensions of the structure.

(4) The placement and type of any accessory structures.

(5) The proposed grade elevations of the structure for the front using the curb as a benchmark if the ground is level. If the ground on which the structure is to be placed is unlevel, elevations for the front, back and sides must be shown.

If the permit application is for construction of a commercial, industrial or multi-family (two family units are not included) two sets of plans must be submitted with the building permit application. The plans must be stamped by an architect and/or engineer registered in the State of Kansas and must meet the requirements for such plans as outlined in the most recently adopted version of the Uniform Building Code. The plans must also identify how compliance with all applicable state and federal accessibility requirements are to be achieved.

If the building permit application is for remodeling a single family, or two family dwelling unit or if the remodeling is for a commercial, industrial or multi-family dwelling unit and the projected cost of the remodeling for commercial, industrial or multi-family dwelling unit is less than \$10,000 a plot plan as outlined above must be submitted. If the projected cost of remodeling of a commercial, industrial or multi-family dwelling unit is in excess of \$10,000 two sets of plans prepared and stamped by an architect or engineer registered in the State of Kansas must be submitted.

(c) Upon approval of the completed application, payment of fees and a determination that a permit should be issued, the chief building official shall issue a permit to the owner, the owner's agent, or the contractor authorized to perform the construction as shown on the application.

(d) Any permit issued under this section shall be valid and subsisting for a period of not more than six months from the date of issuance unless the permit holder has commenced, within the period so limited, the work authorized by such permit. Building work commenced for the purpose of this section shall mean the beginning of work other than the preparation of plans or the staking out of the building location or the letting of a contract for construction.

(e) The fees for building permits shall be established as follows:

Total Building Valuation - Fee

\$0 to \$2,000	\$25.00
\$2,001 to \$5,000	\$35.00
\$5,001 to \$10,000	\$70.00
\$10,001 to \$50,000	\$100.00
\$50,001 to \$100,000	\$150.00
\$100,001 to \$500,000	\$275.00
\$500,001 to \$1,000,000	\$350.00
\$1,000,000 and up	\$500.00 (plus \$.50 for each additional \$1,000 or fraction thereof.

Fees for certain inspections and re-inspections shall be established as follows:

(i) Inspections outside of normal business hours - \$25.00 per hour (minimum charge - one hour);

(ii) Re-inspection fee for such portion of work for which an inspection is called for but is not complete and ready for inspection or when required corrections to work have not been completed in conformance with the building inspector's directions - \$15.00 per hour during normal working hours and subject to outside normal hour fee if after working hours;

(iii) Additional plan review required by revisions, changes or additions to approved plans - \$25.00 per hour (minimum charge - one hour).

The fees herein cited shall be paid to the office of the city clerk upon the obtaining of a building permit or upon receipt of an item invoice and the same shall be credited to the general operating fund of the city.

(f) A copy of the building permit shall be displayed in a conspicuous place on the building work premises for public inspection during the performance of the building work and until such time that all building work is completed and inspected as authorized. The building inspector may require a certified copy of the approved plans of such building work to be kept on the premise at all times from the commencement of the work to the completion thereof.

(g) Upon issuance of the building permit a dual purpose inspection record/certificate of occupancy will be filled out and will remain in the custody of the building inspector until such time as the building work is completed. Upon completion of the building work and after final inspection, the building inspector shall place his or her signature at the bottom of the inspection record/certificate of occupancy certificate to signify that the building work has been inspected and/or the structure is ready for occupancy. The certificate shall be affixed to the electrical panel box, or where no electrical panel box is available it shall be placed in a conspicuous place so as not to interfere with the aesthetics of the decor.

(Ord. 130-1995-079, Sec. 1; Code 2007)

4-104.

INSPECTION OF BUILDING; LAYOUT OF BUILDING; NOTICE TO INSPECTOR. (a) Any owner, owner's agent, or contractor having a duly approved permit for new construction or additions or modifications to existing buildings or structures, shall notify the building inspector immediately upon the marking or staking out of the site. The building inspector shall inspect the marking or stakeout for conformity with this article and with respect to lot lines, setback requirements and location of the proposed structures to determine conformity with the city's zoning regulations. In situations where doubt exists as to lot lines, setbacks, etc., the chief building official may require a survey of the property be made by a licensed surveyor to determine the lot lines. If so required, the survey shall be performed at the expense of the permit holder. In addition to the marking or stakeout inspection the

following inspections are required for any construction which involves the work generally described by the inspection type:

- (1) Footings;
- (2) Foundation;
- (3) Plumbing;
- (4) Sewer connection (exterior)
- (5) Electrical;
- (6) Mechanical;
- (7) Gas (exterior);
- (8) Framing;
- (9) Final.

The building inspector shall, during the course of all building work, make such other inspection as deemed necessary or as may be required by the Uniform Building Code.

(b) Upon completion of any construction covered by this article, it shall be the duty of the person or persons performing such work to notify the building inspector that such work is ready for inspection and request that such work be inspected within a reasonable time.

(Ord. 130-1995-079, Sec. 1)

4-105.

**CONTRACTORS.** (a) A contractor, within the meaning of this article, shall be defined as any person who undertakes, with or for another to build, construct, alter, repair, add to or wreck any building or structure, or any portion thereof, within the city, for which a permit is required by this article, for a fixed price, fee, percentage, or other compensation other than wages, or who advertises or otherwise represents to the public to have the capacity or ability to undertake to build, construct, alter, repair, add to or wreck any building or structure or any portion thereof; or who builds, constructs, alters, adds to or wrecks any building or structure either on his or her own or other property for purpose of speculation.

(b) A contractor shall be responsible for all work included in his or her contract whether or not such work is done by him or her directly or by a subcontractor. He or she shall be responsible for all funds or property received by him or her for execution or completion of a specific contract or for a specific purpose.

(c) No building permit shall be issued to any person or contractor who has not first obtained a license or who is delinquent in payment of his or her annual license fee or whose license has been suspended by action of the city. It shall further be unlawful for any person to enter into a contract with another so as to bring himself or herself under the classification of a contractor, as defined in this section, or to perform any work as a contractor, or any work under contract, without having first obtained a contractor's license.

(d) All contractor licenses shall expire on the last day of December and must be renewed annually by payment of the annual fee by the end of the following month. Any contractor failing to renew his or her license by the prescribed date shall be required to be re-examined and approved by the city. Fees shall not be prorated because part of the year has elapsed.

(e) Fees for contractor licenses shall be established by classification as follows:

(i) Class A - A Class A contractor's license shall entitle the holder thereof to construct for, and to perform any act as a contractor, as defined in this section, for the

building, remodeling or repairing of any structure or addition thereto that is permitted by the title. The annual fee shall be \$100.00.

(ii) Class B - A Class B contractor's license shall entitle the holder thereof to contract for or to perform any act as a contractor, as defined in this section, but which is limited to construction and remodeling of commercial buildings and single or multiple dwelling residential buildings not exceeding three stories in height. The annual fee shall be \$75.00.

(iii) Class C - A Class C contractor's license shall entitle the holder thereof to contract for and to perform any act as a contractor, as defined in this section, but limited to remodeling and repairs or improvement of one, two or three family residences not exceeding two stories in height and nonstructural commercial remodeling. The annual fee shall be \$50.00.

(iv) Class D - A Class D contractor's license shall entitle the holder thereof to contract for and to perform any act as a contractor, as defined in this section, but which is limited to remodeling and repairs on one to four family residences including but not limited to reroofing, foundation repair and interior partitions. The annual fee shall be \$25.00.

(f) A holder of a Class A, B, C or D contractor's license shall first have obtained an indemnity bond in an amount to be determined annually by the chief building official, which bond shall be approved and filed with the office of the city clerk and shall be payable to the city in the event the holder fails to comply with the Uniform Building Code and all other applicable ordinances of the city. The principal shall immediately indemnify the city against any and all loss, damage or liability which shall in any way be incidental to or grow out of the act of moving equipment, material and supplies across or through the streets, alleys and sidewalks of the city by the principal, his or her agents or employees.

(g) The chief building official shall establish criteria for the examination and subsequent certification of applicants desiring contractor licenses to engage in the trade of contractor as defined in this section. Such criteria may include a written examination designed to assess the applicant's practical and theoretical knowledge of the type of construction or demolition work applicable to the various types of contractor license provided for in this section. The chief building official may allow the issuance of a contractor's license under this section to the person or firm holding a valid contractor's license of comparable class from a city with a population greater than that of the city.

(h) All contractor's licenses shall be recorded in the office of the city clerk and shall be nontransferable. Upon the applicant completing and filing the formal application as required in this section, and payment of appropriate fee for the class of license requested, the office of the city clerk shall thereupon issue such contractor's license.

(i) The chief building official may upon his or her own motion, and upon receipt of a valid verified complaint in writing from any person asking for the revocation or suspension of license of a contractor for any reason set out herein shall, notify the contractor by serving a written notice upon the contractor within five days of the receipt. The notice shall be mailed to the contractor's last known address. The contractor thereupon may within five days of receipt of such notice of revocation from the chief building official, request a hearing before the governing body by filing a written request and paying the filing fees for such hearing.



A contractor's license may be revoked or suspended by the city clerk upon finding that the contractor has committed any one or more of the following acts or omissions:

- (i) Willful and deliberate disregard and violation of the provisions of this ordinance or any other ordinance of the city, or failure to comply with any lawful order of the chief building official;
  - (ii) Failure to pay annual license fee;
  - (iii) Misrepresentation of a material fact by the applicant in obtaining a contractor's license or in obtaining a building permit;
  - (iv) Fraudulent use of license to obtain building permits for other persons;
  - (v) Failure to obtain permits as required under this article;
  - (vi) Failure to appear before the city clerk after notice given as required above;
  - (vii) Upon a determination by a court of competent jurisdiction that the contractor has divested funds on property received for performance or completion of any contract to the use and purpose of any other contract, or failure, neglect or refusal to use such funds or property for the performance and completion of such contract or that contractor has committed a fraudulent act resulting in substantial injury to another.
- (j) The provisions of this section shall not apply to the following:
    - (i) Subcontractors working for and under the direct supervision of a licensed general contractor;
    - (ii) Plumbers, electricians or other trades for which special license or bonds are required;
    - (iii) Any owner or his or her authorized agent making ordinary repairs to any building which repairs do not involve the structure of the building and on which a contract is not employed.

(Ord. 130-1990-066, Sec. 6; Code 2003)

4-106. **WORK BY PROPERTY OWNER.** Nothing herein contained shall prohibit any property owner from personally performing any building or construction work within and upon his or her own property, the owner shall satisfy the building inspector as to his or her ability to perform such work, secure a permit, pay required fees, do work in accordance with this article, and apply for inspections and receive a certificate of approval. Personal building or construction performed by an owner under this section shall be by himself, herself, for himself or herself on his or her own property, without compensation and no person shall be employed to assist him or her in any way on such work except a builder or builder contractor licensed by the city. (Ord. 130-2002-098, Sec. 1)

4-107. **LIABILITY.** This article shall not be construed to relieve from any liability or lessen the liability of any person performing any activity connected herewith, nor shall the city be held as assuming any liability by reason of any inspection authorized herein, by reason of any certificate of inspection issued by it or by reason of any permit or license granted herein. (Ord. 130-1990-066, Sec. 9)

4-108. **SEVERABILITY.** If any section of the International Building Code or of this article shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, then such section shall be considered separate and apart from the remaining sections, the section to be completely severable from the remaining provisions which shall continue in full force and effect.

(Ord. 130-1990-066, Sec. 9; Code 2003)

4-109.

**SAME; INSURANCE EXCEPTION TO BOND.** In lieu of obtaining a corporate surety bond as required by section 4-105 (f) of this article, a contractor may fulfill this obligation if he or she shall procure and maintain a liability insurance policy a minimum in the amount of \$100,000 for the death or injury of any one person and \$300,000 for the death or injury of any number of persons in any one accident and \$50,000 for property damage in any one accident. Such policies of insurance shall be issued by some insurance company authorized to do business in the State of Kansas.

A contractor may qualify as to the insurance requirements by filing a certificate with the city clerk executed by the agent of such company stating that the required policy of insurance has been issued by such company for the purpose required by this article and that such insurer will not cancel the policy except upon giving 30 days notice in writing to the city; and that the certificate shall be filed for an annual period beginning January 1 and ending December 31 of such year. (Ord. 130-2008-113, sec. 1)

## ARTICLE 2. ELECTRICAL CODE

4-201. DEFINITIONS. For the purpose of this article, the words and phrases used herein shall have the meanings ascribed to them in this section, unless the context clearly indicates to the contrary.

(a) Approved - shall mean approved by the chief building official, the electrical inspector or his or her designee.

(b) Authorized person - shall mean any individual, firm or corporation who or which is licensed under the provisions of this article to do the work as permitted under the specified provisions of this article.

(c) City - shall mean the territory within the corporate limits of this city.

(d) Conductor - shall mean a wire or cable or other form of metal suitable for carrying the electric current or potential.

(e) Electrical construction or installation - shall mean and include all work and materials used in installing, maintaining or extending a system of electrical wiring and all appurtenances, apparatus or equipment used in connection therewith, inside or attached to any building, structure, lot or premises, except industrial plants where fulltime maintenance is provided and other agencies providing inspections of installations and facilities. Electrical construction shall not be held to mean or include any of the following:

(1) The replacement of lamps, fuses, bulbs or the connection of portable electrical equipment to suitable permanently installed receptacles and replacement of receptacles and switches, lighting fixtures and apparatus where no changes or alterations are made to the wiring;

(2) Any work involved in the manufacturing, repair or testing of any electrical equipment or apparatus, but not including any permanent wiring; or

(3) Any work in industrial establishments where inspections come under the scope of other inspection agencies.

(f) Equipment - shall mean conductors, materials, fittings, devices, appliances, fixtures, apparatus, motors and the like, used as a part of or in connection with an electrical installation.

(g) Inspector - shall mean the chief building official or any individual who has been appointed by the city as electrical inspector.

(h) Person - shall mean a natural person, his or her heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors, assigns, or the agent of any of the aforesaid.

(i) Special permission - shall mean the written consent of the chief building official or the electrical inspector.

(j) Special ruling - shall mean a written ruling filed in the office of the chief building official or the electrical inspector.

(Code 1990)

4-202. ADOPTION OF ELECTRICAL CODE BY REFERENCE. The standard code known as the National Electrical Code of 2011, a publication of the National Fire Protection Association, the same being a standard code for the installation of electrical wiring and apparatus and available in book and pamphlet form is hereby incorporated by reference herein and made a part of this article as authorized and in the manner prescribed by K.S.A. 12-3009:3012. One copy shall be marked or

stamped "Official Copy as Incorporated by the Code of the City of Hesston," and shall be filed with the city clerk to be open to inspection and available to the public at all reasonable hours of business.

Any person violating any provision of such code shall be punished as provided in section 1-116 of this code. (Code 2003)

4-203. ADDITIONAL PROVISIONS. The following sections of this article are in addition to the provisions of the standard code incorporated by reference in section 4-202. (Code 1990)

4-204. BUILDING OFFICIAL; AUTHORITY. The city administrator or his or her authorized designee shall be responsible for the administration and enforcement of this article and appointment of an electrical inspector in accordance with section 4-204 of this chapter, which shall apply in a like manner to this article. (Code 1990)

4-205. ELECTRICAL INSPECTOR; APPOINTMENT. The city administrator shall appoint some qualified officer or employee of the city to be and perform the duties of electrical inspector as may be required, subject to the consent and approval of the governing body. (Ord. 130-1970-010, Sec. 5; Code 1990)

4-206. SAME; DUTIES. The electrical inspector shall have the following duties:

- (a) To enforce all regulations relating to electrical construction, alteration, repair or removal;
- (b) May permit, with the approval of the governing body, on the basis of duly authenticated reports from recognized sources, the use of new materials or modes of electrical construction, not provided for in this article, and may, for the purpose of carrying out the intent of this article adopt an accepted standard of material or workmanlike practices of federal or state bureaus, national, technical organizations or fire underwriters;
- (c) To examine all buildings requiring electrical construction in the process of erection, construction, alteration or relocation in the city for the purpose of determining whether the work is in compliance with the permit given and in compliance with the regulations of the city pertaining to such work, including zoning regulations; and
- (d) To keep comprehensive records of applications, of permits or certificates issued, of inspections made, of reports rendered, and of notices or orders issued. All such records shall be open to public inspection during stated office hours, but shall not be removed from the office of the building official or electrical inspector without his or her written consent.

(Code 1990)

4-207. SAME; POWERS. The electrical inspector shall have the following powers:

- (a) To enter any building or structure or premises at any reasonable hour, whether complete or in the process of erection, to perform the duties contained in this chapter;
- (b) To adopt and enforce all such prudent emergency measures as he or she may deem necessary and expedient for the public safety under the laws of the city;
- (c) May cause any work done in violation of this chapter to be discontinued until he or she shall have satisfactory evidence that the work will be done in accordance with the electrical regulations of the city, subject to the right of any installer or owner to appeal to the governing body.

(Code 1990)

4-208. CLARIFICATION; MODIFICATION. (a) The governing body shall be the final determiner of the scope and meaning of all provisions of the electrical code which may be unclear, ambiguous, or requiring interpretation.

(b) The electrical inspector shall have power to modify any of the provisions of the electrical code upon application in writing by the owner or lessee or his or her authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code. In approving modifications, the electrical inspector shall see that the spirit of the code is observed, public safety secured and substantial justice done. The particulars of a modification when granted or allowed and the decision of the inspector thereon shall be entered upon the records of the electrical inspector and a signed copy shall be furnished to the applicant.

(Code 1990)

4-209. ELECTRICAL PERMIT REQUIRED; APPLICATION; APPROVAL. (a) Except as provided in subsection (b), it shall be unlawful for any person to engage in any electrical construction as defined in section 4-201 within the city without an electrical permit being first obtained therefor from the city clerk, after approval by the chief building official or his or her duly authorized assistant. The application for such permit shall be made and the permit obtained before any electrical construction work is commenced.

(b) No electrical permit shall be required for any of the following:

(1) The replacement of lamps, fuses, bulbs or the connection of portable electrical equipment to suitable permanently installed receptacles and replacement of receptacles and switches, lighting fixtures and apparatus where no changes or alterations are made to the wiring;

(2) Any work involved in the manufacturing, repair or testing of any electrical equipment or apparatus, but not including any permanent wiring; or

(3) Any work in industrial establishments where the issuance of electrical permits come under the scope of other agencies.

(Ord. 130-1970-010, Secs. 21:22; Code 1990)

4-210. SAME; APPLICATION INFORMATION REQUIRED. (a) An electrical permit shall be issued upon an application in writing to the office of city clerk on a form or forms provided for the purpose. This application shall, among other things, disclose the following:

(1) The name of the owner of the lot or tract of ground;

(2) The location of the building or structure;

(3) The electrical construction work proposed;

(4) The class of occupancy;

(5) The class of electrical construction;

(6) The kind of materials to be used;

(7) The estimated cost of the work;

(8) The date work will commence;

(9) Expected date of completion;

(10) Name and address of electrical contractor or contractors doing the work;

(11) Such other information as may be pertinent to the issuance of the required permit.

(b) An application for an electrical permit shall be signed by the owner or his or her duly authorized agent, or an electrician or electrical contractor licensed by the city. If the application is made by the owner or his or her agent, it shall contain the name or names of the licensed electrician or electrical contractor or contractors doing the work described, or an electrical permit may be issued to the owner upon his or her application disclosing satisfactory evidence that the proposed work will be performed by the owner, himself or herself and not by a licensed electrical contractor, and likewise subject to the final approval of the electrical inspector for work performed.

(c) Upon approval of the completed application and a determination that a permit should be issued, the chief building official or his or her assistant shall issue a permit to the owner, electrician or electrical contractor authorizing the electrical construction work covered by the application.

(d) Any permit issued under this section shall be valid and subsisting for a period of not more than six months from the date of issuance unless the permittee shall have commenced, within the period so limited, the electrical construction work authorized by such permit. Electrical construction work commenced, for the purpose of this section, shall mean the beginning of electrical construction work other than the preparation of plans or the letting of an electrical contract.

(Ord. 130-1970-010, Secs. 21:22; Code 1990)

4-211. SAME; PLANS AND SPECIFICATIONS. Whenever an application for a electrical permit is made, the chief building official or the electrical inspector may, if he or she finds it necessary to determine whether electrical construction work described in the application will comply with the laws pertaining to such work, require that the applicant file a written description or drawing of the proposed electrical construction as may be prepared for the purpose. If such drawing or description is insufficient for the purposes of determining whether a permit should be issued, the building official may require the applicant to file complete electrical and engineering plans and specifications for such electrical construction, or any part thereof, as may be necessary for the inspector to determine compliance with this article. The filing of such plans and specifications and the approval thereof in connection with an application for a permit shall not in any way affect the authority of the city to deny or issue a permit, or to inspect any electrical construction work for conformity with this article. (Code 1990)

4-212. FEES. Permit fees shall be based upon inspections required. The applicant shall state, prior to the issuance of a permit, the quantity of inspection required and upon this statement charges shall be made. At the completion of work, any additional inspections shall be charged at the regular rate.

(a) Regular fees: For each inspection required - \$25.00.

(b) Penalty fees: Where work for which a permit is required has been started prior to issuance of a permit, unless specifically approved by the building official, the fees provided for above shall be doubled. No permit shall be issued until all fees due, from prior months have been paid. The building official shall remit to the city clerk all fees received.

(c) Fees not required: Permits issued under this code that the work for which issued is part of a project in which a building permit is required; the fees assessed for the building permit shall cover all subsequent fees for all permits.

(Code 1990)

- 4-213. SAME; POSTING. A copy of the electrical permit shall be kept on the premises for public inspection during the performance of the work and until the completion of the same. The electrical inspector may require a certified copy of the approved plans to be kept on the premises at all times from the commencement of the work to the completion thereof. (Code 1990)
- 4-214. REQUEST FOR INSPECTION. Upon the completion of any electrical work covered by this article, it shall be the duty of the person doing such work to notify the electrical inspector and request that it be inspected at least one working day prior to the needed inspection; after which such work shall be inspected promptly as hereinafter provided. (Ord. 130-1970-010, Sec. 6; Code 1990)
- 4-215. INSPECTION; CONCEALMENT OF PRIOR WORK. (a) When any electric equipment is to be hidden from view by the permanent placement of parts of the building, the person, firm or corporation installing the equipment shall notify the building inspector and such equipment shall not be concealed until it has been inspected, approved or authorized by the electrical inspector or until 24 hours, exclusive of Saturdays, Sundays and holidays, shall have elapsed from the time of such notification. On large installations, where the concealment of equipment proceeds continuously, the person, firm or corporation installing the electrical equipment shall give the electrical inspector due notice and inspections shall be made periodically during the progress of the work.
- (b) The electrical inspector shall have the authority to require building contractors to open such work which, in any manner, conceals electrical wiring that has been closed without his or her knowledge or permission, and in no case shall the inspector issue a certificate of approval until satisfied that the work is in accordance with the provisions of this article. The inspector shall also have the right to refuse to issue a certificate of approval on any wiring, that is concealed in such manner that it cannot be fully determined that it has been done in accordance with this article. (Ord. 130-1970-010, Sec. 6; Code 1990)
- 4-216. CONDEMNATION; APPEAL. (a) If in the judgment of the electrical inspector, after an inspection, any electrical conductors, appliances or equipment in any building are unsafe or dangerous to persons or property, the inspector shall have the power to cause the wires or appliances to be disconnected from the source of electrical energy supplying these conductors or equipment, and may, at his or her discretion, seal the control switches for the same in an open or disconnected position, whereupon he or she shall give notice to the owner, or his or her agent, or by posting such notice at the site and shall also notify the utilities serving the premises. Thereafter, it shall be unlawful for any person to cause or permit electric current to be supplied to the electrical conductors, appliances or equipment so sealed until they shall have been made safe and the inspector shall have issued a certificate of approval to that effect.
- (b) It shall be the duty of the electrical inspector to cause all dead wires, unused poles or electric apparatus on the outside of the buildings or in streets or alleys to be removed at the expense of the owners thereof by giving the owners written notice.
- (c) When the electrical inspector condemns all or part of any electrical installation, the owner may, within 10 days after receiving written notice thereof, file a petition in writing for review of the action of the building inspector by the governing body, upon the receipt of which the governing body shall at once proceed to

determine the facts, and within 10 days from receiving the petition make a decision in accordance with their findings.

(Ord. 130-1970-010, Sec. 33; Code 1990)

4-217. INTERFERENCE BY UNAUTHORIZED PERSON. It shall be unlawful for any unauthorized person to, in any manner, change or alter electrical conductors or equipment in or on any building. If in the course of the erection of a building or structure, electrical conductors or equipment are in such position as to interfere with the erection or completion of the structure, notice shall be immediately given the authorized person or firm installing the electrical conductors or equipment, and the needed change shall be made by such authorized person or firm. (Code 1990)

4-218. SAME: EXAMINATION. (a) Any person desiring to engage in or work at the electrical trade as an electrician, shall make application by applying, in writing, to the city clerk and shall at the time and place as the city clerk may direct, be subjected to an examination as to his or her qualifications. Examinations may be in whole or in part in writing, but such examinations shall be sufficiently broad to test the qualifications of the applicant as the city clerk may deem necessary.

(b) In case the applicant for an electrician certificate fails to pass a satisfactory examination, the applicant shall not again apply for an examination until a period of six months has elapsed from the date of the former examination. No part of the examination fee shall be refunded to the applicant.

(Ord. 130-1970-010, Sec. 11; Code 2007)

4-219. CERTIFICATE; APPLICATION FEE; QUALIFICATIONS. (a) The application for the examinations shall be in writing on forms furnished by the city clerk and shall specify what kind of certificate the applicant desires and shall be accompanied by the following fees:

(1) Master Electrician - \$30.00;

(2) Journeyman Electrician - \$25.00;

(b) All applicants for master electrician certificates shall have had sufficient practical experience as a journeyman electrician to prove his or her ability or such other qualifications as the city clerk may require. All applicants for a journeyman electrician certificate shall have had sufficient experience at the trade to prove his or her ability, or such other qualifications as the city clerk may require.

(Ord. 130-1970-010, Sec. 11; Code 2007)

4-220. SAME; ISSUANCE; RENEWAL. (a) An applicant successfully passing the examination shall thereupon be issued a certificate by the city clerk certifying to such fact and for the classification or classifications for which such examination was taken.

(b) All electricians certificate shall expire on December 31. All certificates shall be renewed annually by the city clerk. All holders of an electrician's certificate not renewed within 30 days after expiration may be required to take a new examination, as herein provided, before receiving a new certificate.

(c) The city clerk may recommend the issuance of a certificate without examination to a non-resident master or journeyman electrician upon payment of the \$20.00 master electrician or \$15.00 journeyman electrician examination fee and annual fee of \$10.00 and upon a finding by the board that such person holds a current valid certificate issued to him or her by another city of Kansas whose requirements relating to the issuance of a certificate are equivalent to the provisions of the city.



(Ord. 130-1970-010, Sec. 13; Code 2007)

4-221. **ELECTRICIAN OR ELECTRICAL CONTRACTORS DEFINED.** (a) An electrician or electrical contractor for purposes of this article shall be any person, firm, co-partnership, corporation, association, or any combination thereof, whether a resident or not of the city:

(1) Who or which undertakes with or for another, for a fixed sum, price, fee or any other compensation to install, construct, alter, repair, add to, or move any electrical installation or performs any electrical construction work in the city, for which an electrical construction permit may now or hereafter be required by the laws of the city; or

(2) Who or which advertises or represents himself, herself, or itself to the public to have the capacity or ability to undertake, or submit a bid or offer to install, construct, alter, repair, add to, remove, restore or replace any electrical installation or perform any electrical construction work; or

(3) Who or which installs, constructs, alters, adds to or removes any electrical installation or performs any electrical construction work either on his or her own or other property for purposes of sale or speculation.

(b) An electrician or electrical contractor as defined shall not mean or include:

(1) Any owner or his or her authorized agents or employees making ordinary repairs to his, her or its own building or structure not involving electrical construction and for which a permit is not required or on which an electrician or electrical contractor, as defined, is not required, employed or engaged to perform; or

(2) Any property owner personally performing any improvements, alterations or electrical construction within or upon his or her own property; provided, the owner shall satisfy the electrical inspector as to his or her ability to perform such work, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal electrical construction by an owner under this section shall be by himself, herself, for himself or herself on his or her own property, without compensation and no person shall be employed to assist him or her in any way on such work except an electrician or electrical contractor licensed by the city.

(Ord. 130-1970-010, Secs. 15:20; Ord. 130-2002-098, Sec. 1; Code 2003)

4-222. **ELECTRICIAN'S OR ELECTRICAL CONTRACTOR'S LICENSE REQUIRED; ELECTRICAL PERMITS; UNLAWFUL ACTS.** (a) Each electrician or electrical contractor shall before entering upon any electrical construction work subject to regulation by city laws, apply to the city clerk for an electrician's or electrical contractor's license and receive the same as hereinafter provided and have in his or her possession a valid license authorizing him, her or it to engage in the trade or occupation of electrician or electrical contractor in the city. No license shall be issued until the applicant thereof shall have taken and successfully passed the examination provided for in section 4-218.

(b) No permit for any electrical construction work shall be issued for any such work to be performed by an electrician or electrical contractor, as defined, who has not first obtained a license upon making a proper application and payment of the license fee as required.

(c) It shall be unlawful for any person, firm, company, association or corporation to enter into a contract or agreement with another so as to bring himself, herself, or itself under the definition of an electrician or electrical contractor herein, or

to perform any work as an electrician or electrical contractor or any work under a contract for any work involving electrical construction, without first having obtained an electrician's or electrical contractor's license issued by the city.  
(Ord. 130-1970-010, Secs. 15:20; Code 1990)

4-223. SAME; APPLICATION; GRANTING. Application for an electrician's or electrical contractor's license shall be made upon a form to be supplied by the city which shall disclose the name of the applicant, his or her place of business in the city (and home office if a nonresident), the kind of contracting work engaged in the length of time engaged in such work and places where work has been performed within the past two years. The application shall be signed by the electrician or electrical contractor or his or her authorized agent. Upon presentment of an electrician's license from a larger city or proof of successfully passing the Block & Associates examination and payment of the license fee hereinafter provided the city clerk shall issue the license. (Ord. 130-1970-010, Secs. 15:20; Code 2003)

4-224. SAME; LICENSE FEES; CONDITIONS; RENEWAL; UNLAWFUL ACTS. The following license and license fees shall be paid for each calendar year and such fees and license terms shall not be pro-rated:

(a) Definitions:

(1) Electrical Contractor - shall mean one engaging in all kinds of electrical contract work for a fixed sum, fee or other compensation. License may be issued to any person, firm or corporation of which at least one active member of such firm or corporation holds a valid master electrician's certificate.

(2) Master Electrician - shall mean one possessing a valid master electrician's certificate issued by the city or having qualified himself or herself for approval as herein provided by the city clerk.

(3) Journeyman Electrician - shall mean one possessing a valid journeyman electrician's certificate issued by the city for having qualified himself or herself for approval as herein provided by the city clerk.

(4) Firm or Corporation Specialty Electrician - shall mean a person, firm or corporation not engaged in the business of electrical installation who has a person holding a certificate of competency regularly and continuously in his or her employment. All electrical work performed under this license must be performed for the employing firm or corporation only and not for hire outside the firm or corporate premises.

(b) Fees:

Electrical Contractor - \$40.00.

Master Electrician - \$30.00.

Journeyman Electrician - \$25.00.

Firm or Corporate Electrician - \$15.00.

Each such license shall set forth the kind of electrical construction work in which the licensee may engage. The licensee shall display his or her license at any place where he or she may be engaged in contract work or produce the same on demand of any city officer. All licenses shall be renewable annually on or before the first day of January of the year for which issued.

It shall be unlawful for any firm or corporation to contract for any kind of work covered by this article without having a valid license issued by the city to perform such contracts.

(Code 2007)

4-225. ELECTRICIAN'S OR ELECTRICAL CONTRACTOR'S BOND REQUIRED; CONDITIONS; APPROVAL; RIGHTS RESERVED. (a) Before any license shall be issued to any electrician or electrical contractor required by this article to obtain a license and pay a fee to the city, the electrician or electrical contractor shall secure and file with the city clerk a good and sufficient corporate surety bond in the principal sum of \$25,000 conditioned that the principal named therein shall faithfully and fully observe all laws of the city relating to the business or occupation for which a license is desired and further conditioned to hold and save the city harmless and free of claims for loss or damage to persons or property, or from damage, injury or destruction of property belonging to the city, resulting from, or arising out of, the negligence or failure of the principal or any of his, her or its employees, agents, servants to use due care or diligence respecting any opening or excavation made in, or adjacent to any street, alley or public ground in the city, or any materials stored, placed or used in any such places, or the operation or use of any vehicle, machinery or equipment in the streets, alleys or public grounds in connection with the business or occupation licensed. Each such bond shall be issued by a company authorized to do business in the State of Kansas and further conditioned that in the event of cancellation or expiration that the company or agent will give 10 days notice of such fact to the city clerk. Each such bond shall be approved as to form by the city attorney and approved as to surety by the city council and the approval thereof shall be endorsed on the bond by the city attorney and by the chairperson of the city council over their signatures.

(b) Each bond shall be dated to run from the first day of any license issued by the city to the principal and may cover the period of not to exceed two years. No bond shall be renewed by an extension certificate but a new bond shall be filed by the principal for each successive period following the renewal thereof. The city reserves the right to furnish the form of all surety bonds as may be required by this article. (Ord. 130-1970-010, Secs. 15:20; Code 2003)

4-226. SAME; INSURANCE EXCEPTION TO BOND. In lieu of obtaining a corporate surety bond as required by section 4-219 of this article, an electrician or electrical contractor may fulfill this obligation if he or she shall procure and maintain a liability insurance policy in the amount of \$100,000 for the death or injury of any one person and \$300,000 for the death or injury of any number of persons in any one accident and \$50,000 for property damage in any one accident. Such policies of insurance shall be issued by some insurance company authorized to do business in the State of Kansas. An electrician or electrical contractor may qualify as to the insurance requirements by filing a certificate with the city clerk executed by the agent of such company stating that the required policy of insurance has been issued by such company for the purpose required by this article and that such insurer will not cancel the policy except upon giving 30 days notice in writing to the city; and that the certificate shall be filed for an annual period beginning January 1 and ending December 31 of such year. (Ord. 130-1970-010, Secs. 15:20; Code 1990)

4-227. LICENSE SUSPENSION; REVOCATION; APPEAL; UNLAWFUL ACTS.

(a) The license of any electrician or electrical contractor may be suspended temporarily, for a period of not to exceed 30 days at any one time, by the chief building official upon his or her own motion or upon a complaint of the city electrical inspector. Notice shall be given in writing to such electrician or electrical contractor

giving reasonable notice of a time of hearing of the complaint or the matter alleged against such electrician or electrical contractor involving any one or more of the following:

- (1) Misrepresentation of a material fact by applicant in obtaining a license;
- (2) Use of license to obtain an electrical permit for another;
- (3) Failure or neglect to observe conditions of permit authorizing encumbering of streets or sidewalks for safety of public;
- (4) Performance of any electrical construction work without a permit where one is required by law; or
- (5) Wilful disregard of any violation of the electrical construction laws, or failure to comply with any lawful order of the city electrical inspector.

(b) Any licensee may within 15 days appeal in writing to the governing body from any order of the chief building official suspending his or her license for its final decision thereon. The governing body may upon such hearing terminate such suspension within not more than 30 days thereafter, or may revoke such license. If any license shall be revoked, the electrician or electrical contractor shall not be eligible for a new license during a period of six months thereafter. No fee shall be refunded in event of the suspension or revocation of any electricians or electrical contractor's license.

(c) It shall be unlawful to engage in the occupation or trade of electrician or electrical contractor during the time any license of such electrician or electrical contractor has been suspended or revoked.

(Ord. 130-1970-010, Secs. 15:20; Code 1990)

4-228.

**WORK BY PROPERTY OWNERS.** Nothing herein contained shall prohibit any property owner from personally performing any electrical construction or installing electrical wiring or equipment within and upon his or her own residence and intended for his or her personal use and permanent occupancy; provided, the owner shall satisfy the electrical inspector as to his or her ability to perform such work or install such electrical wiring, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive a certificate of approval. Personal electrical construction or installation performed by an owner under this section shall be by himself, herself, for himself or herself on his or her own property, without compensation and no person shall be employed to assist him or her in any way on such work except an electrician or electrical contractor licensed by the city. (Code 2003)

4-229.

**APPROVED MATERIALS.** No electric materials for wiring of appliances or equipment shall be installed in the city unless they are in conformity with the provisions of this article and with the approved standards of construction for safety to life and property. Conformity of materials for wiring appliances and equipment to the standards of the Underwriters Laboratories, Inc. shall be prima facie evidence that the materials, devices, appliances and equipment comply with the requirements of this article. (Code 1990)

4-230.

**LIABILITY.** This article shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical equipment for damages to persons or property caused by any defect therein, nor shall the city be held as assuming any such liability, by reason of the inspection or reinspection authorized herein, or the certificate of approval of any work

or equipment authorized herein or by reason of any permit or license granted herein.  
(Code 1990)

4-231. SEVERABILITY. If any section of the National Electrical Code or of this article shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, then such section shall be considered separate and apart from the remaining provisions of the National Electrical Code or of this article, the section is to be completely severable from the remaining provisions which shall continue in full force and effect. (Code 1990)

### ARTICLE 3. PLUMBING AND GAS-FITTING CODE

4-301. DEFINITION OF PLUMBING. The term plumbing as used in this article shall be construed to mean the installation of gas or water pipes, fixtures, apparatus and the necessary connections either for supplying gas or water to premises or for the removing of liquid and water-borne wastes from premises in the city, or both such purposes, and shall also denote installed fixtures, drainage and vent systems and gas or water distribution systems as the case may be. (Code 1990)

4-302. INTERNATIONAL PLUMBING CODE INCORPORATED. There is hereby adopted and incorporated by reference, for the purpose of establishing rules and regulations for the practice of plumbing and gas-fitting, including the installation, maintenance, extension and alteration of all pipes, fixtures, appliances and appurtenances in connection with sanitary sewers and public and private water and fuel gas systems, the International Plumbing Code, 2012 edition, as published by the International Code Council, such codes being made as a part of the ordinances and code of the City as if the same had been set out in full herein, all as authorized in the manner prescribed by K.S.A. 12-3009 through 12-3012 including any amendments thereto. One copy of the International Plumbing Code, 2012 edition shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Hesston," shall be filed with the City Clerk to be open to inspection and available to the public at all reasonable hours of business.

Any person violating any provisions of such code shall be punished as provided in Section 1-116 of this Code. (Ord. No 130-2016-130, Sec. 1)

4-303. ADDITIONAL PROVISIONS. The following sections of this article are in addition to the provisions of the standard code incorporated by reference in section 4-302. (Code 1990)

4-304. BUILDING OFFICIAL; AUTHORITY. The city administrator or his or her authorized designee shall be responsible for the administration and enforcement of this article and appointment of a plumbing inspector in accordance with section 4-204 of this chapter, which apply in a like manner to this article. (Ord. 130-1970-011; Code 1990)

4-305. PLUMBING INSPECTOR; APPOINTMENT. The city administrator shall appoint some qualified officer or employee of the city to be and perform the duties of plumbing inspector as may be required, subject to the consent and approval of the governing body. (Ord. 130-1970-011, Sec. 4; Code 1990)

4-306. SAME; DUTIES. The plumbing inspector shall have the following duties:

- (a) To enforce all regulations relating to plumbing construction, alteration, repair or removal;
- (b) May permit, with the approval of the governing body, on the basis of duly authenticated reports from recognized sources, the use of new materials or modes of construction, not provided for in this article, and may, for the purpose of carrying out the intent of this article adopt an accepted standard of material or workmanlike

practices of federal or state bureaus, national, technical organizations or fire underwriters;

(c) To examine all buildings in the process of erection, construction, alteration or relocation in the city for the purpose of determining whether the work is in compliance with the plumbing permit given and in compliance with the regulations of the city pertaining to such work, including zoning regulations; and

(d) To keep comprehensive records of applications, of permits or certificates issued, of inspections made, of reports rendered, and of notices or orders issued. All such records shall be open to public inspection during stated office hours, but shall not be removed from the office of the building official or plumbing inspector without his or her written consent.

(Ord. 130-1970-011, Sec. 4; Code 1990)

4-307. SAME; POWERS. The plumbing inspector shall have the following powers:

(a) To enter any building or structure or premises at any reasonable hour, whether complete or in the process of erection, to perform the duties contained in this chapter;

(b) To adopt and enforce all such prudent emergency measures as he or she may deem necessary and expedient for the public safety under the laws of the city;

(c) May cause any work done in violation of this chapter to be discontinued until he or she shall have satisfactory evidence that the work will be done in accordance with the plumbing regulations of the city, subject to the right of any plumber, plumbing contractor or owner to appeal to the governing body.

(Ord. 130-1970-011, Sec. 4; Code 1990)

4-308. SAME; RIGHT OF ENTRY. The plumbing inspector, or his or her agent, upon proper identification, shall have authority to enter any building, structure or premises at any reasonable hour to perform his or her duties as set out in this chapter.

(Ord. 130-1970-011; Sec. 4; Code 1990)

4-309. CLARIFICATION; MODIFICATION. (a) The governing body shall be the final determiner of the scope and meaning of all provisions of the plumbing code which may be unclear, ambiguous, or requiring interpretation.

(b) The plumbing inspector shall have power to modify any of the provisions of the plumbing code upon application in writing by the owner or lessee or his or her authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code. In approving modifications, the plumbing inspector shall see that the spirit of the code is observed, public safety secured and substantial justice done. The particulars of a modification when granted or allowed and the decision of the inspector thereon shall be entered upon the records of the plumbing inspector and a signed copy shall be furnished to the applicant. (Code 1990)

4-310. PLUMBING PERMIT REQUIRED; EXCEPTION. (a) It shall be unlawful to install, alter or reconstruct any plumbing or plumbing system, as defined by the plumbing code and section 4-301, in any building in the city without first making application to and receiving a permit therefor from the city clerk, after approval by the chief building official or his or her authorized assistant. The application for such permit shall be made and the permit obtained before any plumbing work is commenced.

(b) No permit shall be required for making minor repairs of any plumbing including repair of leaks in water pipes, traps or cocks, opening up stoppage in waste or supply pipes, traps or drains, replacing fixtures when waste pipes are not disturbed, or replacing frozen pipes inside the building, and like repair work not involving original installation or reconstruction.  
(Ord. 130-1970-011, Sec. 10; Code 1990)

4-311.

SAME; APPLICATION INFORMATION REQUIRED. (a) A plumbing permit shall be issued upon an application in writing to the office of city clerk on a form or forms provided for the purpose. This application shall, among other things, disclose the following:

- (1) The name of the owner of the lot or tract of ground;
- (2) The location of the building or structure;
- (3) The plumbing work proposed;
- (4) The class of occupancy;
- (5) The class of construction;
- (6) The kind of materials to be used;
- (7) The estimated cost of the work;
- (8) The date work will commence;
- (9) Expected date of completion;
- (10) Name and address of plumber, plumbing contractor or contractors doing the work;
- (11) Such other information as may be pertinent to the issuance of the required permit.

(b) An application for a plumbing permit shall be signed by the owner or his or her duly authorized agent, or a plumber or plumbing contractor licensed by the city. If the application is made by the owner or his or her agent, it shall contain the name or names of the licensed plumber, plumbing contractor or contractors doing the work described, or a plumbing permit may be issued to the owner upon his or her application disclosing satisfactory evidence that the proposed work will be performed by the owner, himself or herself and not by a licensed plumber or plumbing contractor, and likewise subject to the final approval of the plumbing inspector for work performed.

(c) Upon approval of the completed application and a determination that a permit should be issued, the chief building official or his or her assistant shall issue a permit to the owner or contractor authorizing the plumbing work covered by the application.

(d) Any permit issued under this section shall be valid and subsisting for a period of not more than six months from the date of issuance unless the permittee shall have commenced, within the period so limited, the plumbing work authorized by such permit. Plumbing work commenced for the purpose of this section shall mean the beginning of plumbing work other than the preparation of plans or the letting of a plumbing contract.

(Ord. 130-1970-011, Sec. 10; Code 1990)

4-312.

SAME; PLANS AND SPECIFICATIONS. Whenever an application for a plumbing permit is made, the chief building official or the plumbing inspector may, if he or she finds it necessary to determine whether work described in the application will comply with the laws pertaining to such work, require that the applicant file a written description or drawing of the proposed plumbing construction as may be



prepared for the purpose. If such drawing or description is insufficient for the purposes of determining whether a permit should be issued, the chief building official or the plumbing inspector may require the applicant to file complete architectural and engineering plans and specifications for such building or construction, or any part thereof, as may be necessary for the inspector to determine compliance with this article. The filing of such plans and specifications and the approval thereof in connection with an application for a permit shall not in any way affect the authority of the city to deny or issue a permit, or to inspect any plumbing work for conformity with this article. (Code 1990)

4-313. SAME; FEES. The fee for a plumbing permit shall be \$15.00, however no fee shall be required to obtain a permit where the total estimated cost, the reasonable value of all services, labor and materials required, is under \$500.00. The fee herein shall be paid to the city clerk upon obtaining a plumbing permit and the same shall be credited to the general operating fund of the city. (Code 1990)

4-314. SAME; POSTING. A copy of the plumbing permit shall be kept on the premises for public inspection during the performance of the work and until the completion of the same. The plumbing inspector may require a certified copy of the approved plans to be kept on the premises at all times from the commencement of the work to the completion thereof. (Code 1990)

4-315. REQUEST FOR INSPECTION. Upon the completion of any plumbing work covered by this article, it shall be the duty of the person doing such work to notify the plumbing inspector and request that it be inspected; after which such work shall be inspected promptly as hereinafter provided.  
(Ord. 130-1970-011, Sec. 11; Code 1990)

4-316. INSPECTION; CONCEALMENT OF PRIOR WORK. (a) When any plumbing is to be hidden from view by the permanent placement of parts of the building, the person, firm or corporation installing the plumbing shall notify the plumbing inspector and such equipment shall not be concealed until it has been inspected, approved or authorized by the plumbing inspector or until 24 hours, exclusive of Saturdays, Sundays and holidays, shall have elapsed from the time of such notification. On large installations, where the concealment of plumbing proceeds continuously, the person, firm or corporation installing the plumbing shall give the plumbing inspector due notice and inspections shall be made periodically during the progress of the work.

(b) The plumbing inspector shall have the authority to require owners or contractors to open such work which, in any manner, conceals plumbing that has been closed without his or her knowledge or permission, and in no case shall the inspector issue a certificate of approval until satisfied that the work is in accordance with the provisions of this article. The inspector shall also have the right to refuse to issue a certificate of approval on any plumbing, that is concealed in such manner that it cannot be fully determined that it has been done in accordance with this article.  
(Ord. 130-1970-011, Sec. 11; Code 1990)

4-317. INSPECTION FEE. An initial inspection fee of \$15.00, and an inspection fee of \$15.00 for subsequent inspections required shall be paid before any plumbing will be approved or a certificate of approval issued. (Code 1990)

- 4-318. CERTIFICATE OF APPROVAL. (a) When the plumbing inspector finds plumbing construction to be in conformity with the provisions of this article, he or she shall issue to the person, firm, or corporation performing the plumbing construction, a certificate of approval, with duplicate copy for delivery to the owner, authorizing the use of the plumbing system and connection to the supply of gas or water, as the case may be.
- (b) When a certificate of approval is issued authorizing the connection and use of a temporary gas or water supply, the certificate shall expire at a time to be stated therein and shall be revocable for cause by the plumbing inspector.
- (c) In no case shall certificates of approval be issued on plumbing or plumbing systems or parts of systems where the work installed does not conform to the requirements of this article.
- (d) If, upon inspection, the plumbing or plumbing system is not found to be fully in conformity with the provisions of this article, the plumbing inspector shall immediately notify the person, firm, or corporation making the installation of the existing defects.
- (e) No certificate of approval shall be issued unless the plumbing or plumbing system has been installed in strict conformity with the provisions of this article and unless the plumbing or plumbing system is made in compliance with nationally approved methods of construction for safety to life and property as herein set forth.
- (f) The plumbing inspector shall be deemed the judge of whether the plumbing or plumbing system has been made in accordance with the requirements of this article.
- (g) No certificate of approval shall be required for making minor repairs of any plumbing including repair of leaks in water pipes, traps or cocks, opening up stoppage in waste or supply pipes, traps or drains, replacing fixtures when waste pipes are not disturbed, or replacing frozen pipes inside the building, and like repair work not involving original installation or reconstruction.  
(Code 1990)
- 4-319. CONNECTION TO GAS OR WATER SUPPLY. It shall be unlawful for any person, firm, or corporation to make connection to a supply of gas or water for which an inspection is required, or which has been disconnected by the order of the plumbing inspector, until a certificate of approval has been issued by the plumbing inspector authorizing the connection and use of such plumbing or plumbing system. The plumbing inspector may, at his or her discretion, authorize a temporary connection. (Code 1990)
- 4-320. CONDEMNATION; APPEAL. (a) If in the judgment of the plumbing inspector, after inspection, the plumbing or plumbing system in any building are unsafe or dangerous to persons or property, the inspector shall have the power to cause the plumbing or plumbing system to be disconnected from the supply of gas or water and may, at his or her discretion, seal the control valves for the same in a closed or disconnected position, whereupon he or she shall give notice to the owner, or his or her agent, or by posting such notice at the site and shall also notify the utilities serving the premises. Thereafter, it shall be unlawful for any person to cause or permit gas or water to be supplied to the plumbing or plumbing system so sealed until they shall have been made safe and the inspector shall have issued a certificate of approval to that effect.

(b) When the plumbing inspector condemns all or part of any plumbing system, the owner may, within 10 days after receiving written notice thereof, file a petition in writing for review of the action of the plumbing inspector by the governing body, upon the receipt of which the governing body shall at once proceed to determine the facts, and within 10 days from receiving the petition make a decision in accordance with their findings.

(Code 1990)

4-321. SAME; ISSUANCE; RENEWAL. An applicant holding a license in a larger city or successfully passing the Block & Associates examination shall be issued a certificate by the city clerk certifying to such fact and for the classification or classifications for which such examination was taken.

(b) All plumbing certificates shall expire on December 31. All plumbing certificates shall be renewed annually by the city clerk upon payment of a renewal fee of \$15.00 which shall be paid to the city clerk. All holders of a plumbing certificate not renewed within 30 days after expiration may be required to take a new examination, as herein provided, before receiving a new certificate.

(Ord. 130-1970-011, Sec. 8; Code 2007)

4-322. PLUMBER OR PLUMBING CONTRACTOR; DEFINED. (a) A plumber or plumbing contractor shall mean:

(1) Any person engaged in the business of installing, altering, maintaining, or repairing plumbing, which shall include all materials and plumbing fixtures, water pipes, portable water treatment equipment, traps, drainage and vent piping, and building drains, including their respective points, connections, devices, receptacles and appurtenances located within the property lines of any premises or in any building.

(2) Any gasfitter or person engaged in the business of installing, altering, or repairing fuel gas piping, gas systems or fixtures.

(b) A plumber or plumbing contractor as defined in subsection (a) of this section shall not mean or include the owner of a property who personally installs plumbing piping or equipment within and upon his or her own property; provided, the owner shall satisfy the plumbing inspector as to his or her ability to install such piping or equipment, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal installation by an owner under this section shall be himself, herself, for himself or herself on his or her own property, without compensation and no person shall be employed to assist him or her in any way on such work except a plumber or plumbing contractor licensed by the city.

(Ord. 130-1970-011, Secs. 2:3; Ord. 130-2002-098, Sec. 1; Code 2003)

4-323. PLUMBER'S OR PLUMBING CONTRACTOR'S LICENSE REQUIRED; PLUMBING PERMITS; UNLAWFUL ACTS. (a) Each plumber or plumbing contractor shall before entering upon any plumbing work subject to regulation by city laws, apply to the city clerk for a plumber's or plumbing contractor's license and receive the same as hereinafter provided and have in his or her possession a valid license authorizing him, her or it to engage in the trade or occupation of a plumber or plumbing contractor in the city.

(b) No permit for any plumbing work shall be issued for any such work to be performed by a plumber or plumbing contractor, as defined, who has not first obtained

a license upon making a proper application and payment of the license fee as required.

(c) It shall be unlawful for any person, firm, company, association or corporation to enter into a contract or agreement with another so as to bring himself, herself, or itself under the definition of a plumber or plumbing contractor herein, or to perform any work as a plumber or plumbing contractor or any work under a contract for any work involving plumbing construction, without first having obtained a plumber's or plumbing contractor's license issued by the city.  
(Ord. 130-1970-011, Secs. 2:3; Code 1990)

4-324. SAME; APPLICATION; GRANTING. Application for a plumber's or plumbing contractor's license shall be made upon a form to be supplied by the city which shall disclose the name of the applicant, his or her place of business in the city (and home office if a nonresident), the kind of contracting work engaged in, the length of time engaged in such work and places where work has been performed within the past two years. The application shall be signed by the plumber or plumbing contractor or his or her authorized agent. The applications shall be, by the chief building official referred to the governing body at its next meeting for action thereon. Upon presentment of a plumbing certificate issued by the city clerk and payment of the license fee hereinafter provided the city clerk shall issue the license.  
(Ord. 130-1970-011, Secs. 2:3; Code 2003)

4-325. SAME; LICENSE FEES; CONDITIONS; RENEWAL; UNLAWFUL ACTS.  
(a) The following license fees shall be paid for the calendar year or major fraction thereof:  
(1) General Plumber or Plumbing Contractor, who shall qualify to engage in more than one kind of plumbing work, the sum of \$40.00;  
(2) Limited Plumber or Plumbing Contractor, who shall qualify to engage in not more than one kind of plumbing work, the sum of \$25.00;  
Any license issued on or after July 1 of each year shall be issued upon payment of one-half the annual license fee.  
(b) Each such license shall set forth the kind of plumbing work in which the licensee may engage. The licensee shall display his or her license at any place where he or she may be engaged in plumbing work or produce the same on demand of any city officer. All licenses shall be renewable annually as in the case of an original license on or before the first day of January of the year for which issued.  
(c) It shall be unlawful for any person, firm or corporation to contract for any kind of work covered by this article without having a valid license issued by the city to perform such contracts.  
(Ord. 130-1970-011, Secs. 3:4; Code 1990)

4-326. PLUMBER'S OR PLUMBING CONTRACTOR'S BOND REQUIRED; CONDITIONS; APPROVAL; RIGHTS RESERVED. (a) Before any license shall be issued to any plumber or plumbing contractor required by this article to obtain a license and pay a fee to the city, the plumber or plumbing contractor shall secure and file with the city clerk a good and sufficient corporate surety bond in the principal sum of \$25,000 conditioned that the principal named therein shall faithfully and fully observe all laws of the city relating to the business or occupation for which a license is desired and further conditioned to hold and save the city harmless and free of claims for loss or damage to persons or property, or from damage, injury or destruction of

property belonging to the city, resulting from, or arising out of, the negligence or failure of the principal or any of his, her or its employees, agents, servants to use due care or diligence respecting any opening or excavation made in, or adjacent to any street, alley or public ground in the city, or any materials stored, placed or used in any such places, or the operation or use of any vehicle, machinery or equipment in the streets, alleys or public grounds in connection with the business or occupation licensed. Each such bond shall be issued by a company authorized to do business in the State of Kansas and shall be executed by an agent of the company and further conditioned that in the event of cancellation or expiration that the company or agent will give 10 days notice of such fact to the city clerk. Each such bond shall be approved as to form by the city attorney and approved as to surety by the city council and the approval thereof shall be endorsed on the bond by the city attorney and by the chairperson of the city council over their signatures.

(b) Each bond shall be dated to run from the first day of any license issued by the city to the principal and may cover the period of not to exceed two years. No bond shall be renewed by an extension certificate but a new bond shall be filed by the principal for each successive period following the renewal thereof. The city reserves the right to furnish the form of all surety bonds as may be required by this article. (Ord. 130-1970-011, Secs. 3:4; Code 1990)

4-327.

SAME; INSURANCE EXCEPTION TO BOND. A plumber or plumbing contractor may fulfill this obligation if he or she shall procure and maintain a liability insurance policy in the amount of \$100,000 for the death or injury of any one person and \$300,000 for the death or injury of any number of persons in any one accident and \$50,000 for property damage in any one accident. Such policies of insurance shall be issued by some insurance company authorized to do business in the State of Kansas.

A plumber or plumbing contractor may qualify as to the insurance requirements by filing a certificate with the city clerk executed by the resident agent of such company stating that the required policy of insurance has been issued by such company for the purpose required by this article and that such insurer will not cancel the policy except upon giving 30 days notice in writing to the city; and that the certificate shall be filed for an annual period beginning January 1 and ending December 31 of such year. (Code 2003)

4-328.

LICENSE SUSPENSION; REVOCATION; APPEAL; UNLAWFUL ACTS.

(a) The license of any plumber or plumbing contractor may be suspended temporarily, for a period of not to exceed 30 days at any one time, by the chief building official upon his or her own motion or upon a complaint of the city plumbing inspector. Notice shall be given in writing to such plumber or plumbing contractor giving reasonable notice of a time of hearing of the complaint or the matter alleged against such plumber or plumbing contractor involving any one or more of the following:

- (1) Misrepresentation of a material fact by applicant in obtaining a license;
- (2) Use of license to obtain a plumbing permit for another;
- (3) Failure or neglect to observe conditions of a permit authorizing encumbering of streets or sidewalks for safety of public;
- (4) Performance of any plumbing work without a permit where one is required by law; or
- (5) Wilful disregard of any violation of the plumbing laws, or failure to comply with any lawful order of the city plumbing inspector.

(b) Any licensee may within 15 days appeal in writing to the governing body from any order of the chief building official suspending his or her license for its final decision thereon. The governing body may upon such hearing terminate such suspension within not more than 30 days thereafter, or may revoke such license. If any license shall be revoked, the plumber or plumbing contractor shall not be eligible for a new license during a period of six months thereafter. No fee shall be refunded in event of the suspension or revocation of any plumber's or plumbing contractor's license.

(c) It shall be unlawful to engage in the occupation or trade of plumber or plumbing contractor during the time any license of such plumber or plumbing contractor has been suspended or revoked.

(Code 1990)

4-329. EXCAVATIONS. When it appears that the laying or repairing of any water or sewer pipes or the making of any connection therewith shall require excavation in any street, alley or public way of the city or the cutting or removal of any pavement, curb or gutter or any sidewalk, during the course of such work, the application for a permit shall so state and describe the location and extent of the excavation, cutting or removal. Before the city clerk shall issue any permit for such work, the applicant shall pay any fee required by this code. All excavations shall be barricaded and guarded as provided by the appropriate sections of this code. Before any such excavation shall be backfilled, new plumbing work therein shall be inspected and the bottom of the excavation holding any sewer, drain or water pipe shall be so filled, leveled and tamped as to properly support the pipe and permit proper drainage when carrying sewage, and the excavation shall be backfilled and all paving, curbing, guttering or sidewalks shall be restored as near as possible to their last condition, subject always to the approval of the plumbing inspector or the superintendent of streets. (Code 1990)

4-330. WORK BY PROPERTY OWNERS. Nothing herein contained shall prohibit any property owner from personally installing plumbing piping or equipment within and upon his or her own property; provided, the owner shall satisfy the plumbing inspector as to his or her ability to install such piping or equipment, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal installation by an owner under this section shall be by himself, herself, for himself or herself on his or her own property, without compensation and no person shall be employed to assist him or her in any way on such work except a plumber or plumbing contractor licensed by the city. (Code 2003)

4-331. APPROVED MATERIALS. No plumbing materials, appliances or equipment shall be installed in the city unless they are in conformity with the provisions of this article and with the approved standards of construction for safety to life and property. Conformity of materials for plumbing materials, appliances and equipment to the standards of the Underwriters Laboratories, Inc. shall be prima facie evidence that the materials, devices, appliances and equipment comply with the requirements of this article. (Code 1990)

4-332. LIABILITY. This article shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling or performing any

plumbing construction for damages to persons or property caused by any defect therein, nor shall the city be held as assuming any such liability, by reason of the inspection or reinspection authorized herein, or the certificate of approval of any work or equipment authorized herein or by reason of any permit or license granted herein. (Code 1990)

4-333. SEVERABILITY. If any section of the Uniform Plumbing Code or of this article shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, then such section shall be considered separate and apart from the remaining provisions of the Uniform Plumbing Code or of this article, the section is to be completely severable from the remaining provisions which shall continue in full force and effect. (Code 1990)

## ARTICLE 4. MOVING BUILDINGS

- 4-401. BUILDING OFFICIAL; AUTHORITY. The building inspector or his or her authorized designee shall be responsible for the administration and enforcement of this article and appointment of an inspector in accordance with sections 4-104 and 4-105:109 of this chapter, which apply in a like manner to this article. (Code 1990)
- 4-402. PERMIT REQUIRED. No person, firm or corporation shall move, haul, or transport any house, building, derrick, or other structure of the height when loaded for movement of 16 feet or more from the surface of the highway, road, street or alley, or a width of eight feet or more or which cannot be moved at a speed of four miles per hour or faster, upon, across or over any street, alley or sidewalk in this city without first obtaining a permit therefor. (K.S.A. 17-1914; Code 1990)
- 4-403. SAME: APPLICATION FOR PERMIT. All applications for permits required under the provisions of this article shall be made in writing to the city clerk specifying the day and hour said moving is to commence and the route through the city's streets over which the house, building, derrick or other structure shall be moved and stating whether it will be necessary to cut and move, raise, or in any way interfere with any wires, cables or other aerial equipment of any public or municipally-owned utility, and if so, the application shall also state the name of the public or municipally-owned utility, and the time and location that the applicant's moving operations shall necessitate the cutting, moving, raising or otherwise interfering with such aerial facilities. (K.S.A. 17-1915; Code 1990)
- 4-404. SAME; BOND, INSURANCE REQUIRED. (a) It shall be the duty of any person at the time of making application for a permit as provided in this article to give a good and sufficient surety bond to the city, to be approved by the governing body, indemnifying the city against any loss or damage resulting from the failure of any such person to comply with the provisions of this article or for any damage or injury caused in moving any such house or structure. The bond herein shall be in the sum of \$5,000, or cash may be deposited in lieu of such surety bond.  
(b) A public liability insurance policy issued by an insurance company authorized to do business in the State of Kansas, in the amount of \$100,000 per person, \$300,000 per accident as to personal injury, and \$50,000 property damage may be permitted in lieu of a bond.  
(Code 1990)
- 4-405. SAME; FEE. Before any permit to move any house or structure is given under the provisions of this article, the applicant shall pay a fee of not less than \$5 to the city clerk; plus the additional cost for the time for any city crews involved in such moving. (Code 1990)
- 4-406. CONTRACTOR; LICENSE REQUIRED; FEE. The provisions of sections 4-119:125 of this chapter shall apply in a like manner to this article. (Code 1990)
- 4-407. ROUTE; DUTIES OF BUILDING OFFICIAL. The city clerk shall, upon filing of the above application, refer the same to the chief building official or his or her authorized designee to check the proposed route and determine if it is practical to



move such house or other structure over the route proposed. If it shall appear that such route is not practical and another route may be used equally well with less danger to street and travel, then he or she may designate such other route as the one to be used and shall notify the applicant of the same. The building official may also require the planking of any street, bridge or culvert or any part thereof to prevent damage thereto. It shall also be the duty of the chief building official or his or her authorized designee to inspect the progress of moving any house or other structure to see that the same is being moved in accordance with the provisions of this article. (Code 1990)

4-408. NOTICE TO OWNERS. (a) Upon issuance of a moving permit the applicant shall give not less than 15 days written notice to any person owning or operating any wires, cables or other aerial equipment along the proposed route of the intent to move the structure, giving the time and location that the applicants moving operation shall necessitate the cutting, moving, raising or interfering of any wires, cables or other aerial equipment.

(b) The notice provision of subsection (a) shall not apply where the person owning or operating any wires, cables or other aerial equipment has waived their right to advance notice.

(c) Should the moving operation be delayed, the applicant shall give the owner or his or her agent not less than 24 hours advance notice of the actual operation. (K.S.A. 17-1916; Code 1990)

4-409. DUTY OF OWNERS. (a) It shall be the duty of the person or the city owning or operating such poles or wires after service of notice as provided herein, to furnish competent lineman or workmen to remove such poles, or raise or cut such wires as will be necessary to facilitate the moving of such house or structure. The necessary expense which is incurred thereby shall be paid by the holder of the moving permit.

(b) The owner of any wires, cables or other aerial equipment, after service of notice as provided in section 4-408, shall be liable to the permit holder for damages in an amount not to exceed \$100.00 per day for each day the owner shall fail or refuse to accommodate the permit holder's moving operations. (K.S.A. 17-1917; Code 1990)

4-410. INTERFERING WITH POLES; WIRES. It shall be unlawful for any person engaged in moving any house or other structure to raise, cut or in any way interfere with any wires or poles bearing wires or any other aerial equipment. (K.S.A. 17-1918; Code 1990)

4-411. DISPLAY OF LANTERNS. It shall be the duty of any person moving any of the structures mentioned in this article upon or across any street, alley or sidewalk or other public place, in this city, to display red lanterns thereon in such a manner as to show the extreme height and width thereof from 30 minutes after sunset to 30 minutes before sunrise. (Code 1990)

## **ARTICLE 5. DANGEROUS AND UNFIT STRUCTURES**

- 4-501.           PURPOSE. The governing body has found that there exist within the corporate limits of the city structures which are unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the city, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this article.  
(K.S.A. 12-1751; Code 1990)
- 4-502.           DEFINITIONS. For the purpose of this article, the following words and terms shall have the following meanings:  
          (a) Structure - shall include any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground.  
          (b) Public Officer - means the building inspector or his or her authorized representative.  
(K.S.A. 12-1750; Code 1990)
- 4-503.           PUBLIC OFFICER; DUTIES. The public officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this article, including the following:  
          (a) Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;  
          (b) Have authority to enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. If entry is denied, the public officer may seek an order for this purpose from a court of competent jurisdiction;  
          (c) Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to the governing body;  
          (d) Receive petitions as provided in this article.  
(Code 1990)
- 4-504.           PROCEDURE; PETITION. Whenever a petition is filed with the public officer by at least five residents charging that any structure is dangerous, unsafe or unfit for human habitation, or whenever it appears to the public officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the governing body. (Code 1990)
- 4-505.           SAME; NOTICE. The governing body upon receiving a report as provided in section 4-504 shall by resolution fix a time and place at which the owner, the owner's agent, any lienholder of records and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished. (K.S.A. 12-1752; Code 1990)

- 4-506. SAME; PUBLICATION. (a) The resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing.  
(b) A copy of the resolution shall be mailed by certified mail within three days after its first publication to each owner, agent, lienholder and occupant at the last known place of residence and shall be marked "deliver to addressee only."  
(K.S.A. 12-1752; Code 1990)
- 4-507. SAME; HEARING, ORDER. If, after notice and hearing, the governing body determines that the structures under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state in writing its findings of fact in support of such determination and shall cause the resolution to be published once in the official city newspaper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed. (Code 2003)
- 4-508. DUTY OF OWNER. Whenever any structure within the city shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same. (Code 1990)
- 4-509. SAME; FAILURE TO COMPLY. (a) If, within the time specified in the order, the owner fails to comply with the order to repair, alter, improve or vacate the structure, the public officer may cause the structure to be repaired, altered, improved, or to be vacated and closed.  
(b) If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the public officer may cause the structure to be removed and demolished.  
(Code 1990)
- 4-510. SAME; MAKE SITE SAFE. Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the public officer may proceed to make the site safe. (Code 1990)
- 4-511. ASSESSMENT OF COSTS. (a) The cost to the city of any repairs, alterations, improvements, vacating, removal or demolition by the public officer, including making the site safe, shall be reported to the city clerk.  
(b) The city shall give notice to the owner of the structure by restricted mail of the cost of removing the structure and making the premises safe and secure. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.  
(c) If the costs remain unpaid after 30 days following receipt of notice, the city clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the

site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.

(d) If the proceeds of the sale of salvage is insufficient to recover the costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land on which the structure was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(K.S.A. 12-1755; Code 2003)

4-512. IMMEDIATE HAZARD. When in the opinion of the governing body any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the governing body may direct the public officer to erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any action under this section shall be assessed against the property as provided in section 4-511. (K.S.A. 12-1756; Code 1990)

4-513. APPEALS FROM ORDER. Any person affected by an order issued by the governing body under this article may, within 30 days following service of the order, petition the district court of the county in which the structure is located for an injunction restraining the public officer from carrying out the provisions of the order pending final disposition of the case. (Code 1990)

4-514. SCOPE OF ARTICLE. Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750:1756. (Code 1990)

## ARTICLE 6. HEATING STANDARDS

4-601. DEFINITIONS. For the purposes of this article, the following rules of construction and definitions shall apply.

(a) ASHRAE - refers to the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc., of New York, New York.

(b) BTUs - means British Thermal Units.

(c) EER - means Energy Efficiency Ratio, the ratio of net cooling capacity in BTUs/hr. to total electric input in watts.

(d) Heated Space - shall mean that space within a building which is provided with a positive heat supply having a connected output capacity in excess of 10 BTUs/hr. per square foot.

(e) New Commercial Building - shall mean any building used to provide, at wholesale or retail, storage, services, supplies, goods or products to the public, other than a building used for the purpose of manufacturing raw material into a finished product.

(f) New Residential Dwelling - shall mean all new hotels, motels, apartment houses, lodging, houses, private homes and other residential dwellings, construction of which commences on or after the effective date of this article, but shall not be construed to apply to mobile homes, or any such new residential dwelling where the foundation has been completed by November 1, 1977. This definition shall apply to buildings of mixed occupancy.

(g) Owner - shall mean a person, as defined herein, holding legal title to the residential dwelling or commercial building.

(h) Person - shall mean any individual, individuals, corporations, partnership, unincorporated association or other business organization, committee, board, trustee, receiver or agent.

(i) City Utility - shall mean the electric system operated by the city.  
(Ord. 150-1978-005, Sec. 1; Code 2003)

4-602. CERTIFICATE OF COMPLIANCE. No connections or attachments of service to new residential dwellings or new commercial buildings shall be made by a city utility until such utility has received a certificate of compliance from the owner that the residential dwelling or commercial building meets the standards set forth in section 4-603 of this article. Such certificate of compliance shall include supporting statements from the architect and/or contractor, if either or both such persons were employed in the design and construction of the new residential dwelling or new commercial building. Receipt by the city utility of such certificate of compliance shall be required for permanent gas utility service.

(Ord. 150-1978-005, Sec. 1; Code 1990)

4-603. STANDARDS. Certificates of compliance required by section 4-602 of this article shall certify that the following heating and cooling standards have been met where applicable:

(a) New residential dwelling shall be constructed so that the total heat loss, based on the ASHRAE Handbook of Fundamentals does not exceed 35 BTUs per square foot per hour of heated floor area of finished living space, at a design temperature differential of 80 degrees Fahrenheit with a maximum of 10 said changes

per hour. Such dwelling must be equipped with storm windows and storm doors or other satisfactory window and door thermal treatment.

(b) New commercial buildings shall be constructed so heat transmission loss of heated areas, based on the ASHRAE Handbook of Fundamentals, does not exceed 35 BTUs per square foot per hour of floor area based on a design temperature differential of 80 degrees Fahrenheit.

(Ord. 150-1978-005, Sec. 1; Code 1990)

4-604. CERTIFICATE FORMAT. Certificates of compliance required by section 4-602 of this article shall be in substantially the following form:

City of Hesston, Kansas

CERTIFICATE OF COMPLIANCE

The Kansas State Corporation Commission has ordered in Docket No. 110,766-U, to provide permanent gas service to new residential dwellings and commercial buildings after November 1, 1977, only if certain standards are met. These standards are set out in section 4-603 of the Code of the City of Hesston.

Having read the requirements for permanent gas service herein, I \_\_\_\_\_, owner, of the residential dwelling \_\_\_\_\_ or commercial building \_\_\_\_\_, (check appropriate blank) located at (address or legal description) \_\_\_\_\_, Kansas, hereby certify that the structure and heating equipment meets the standards as set forth.

\_\_\_\_\_  
Date Owner

BUILDER'S STATEMENT

The undersigned builder was employed in the construction of the building described above and states that it was constructed according to design and specifications which meet the standards set forth in section 4-603 hereof.

\_\_\_\_\_  
Date Building Contractor's Signature

ARCHITECT'S STATEMENT

The undersigned architect was employed in the design and specifications of the building described above and states that it is designed and specified to meet the standards set forth in section 4-603 hereof.

\_\_\_\_\_  
Date Architect's Signature  
(Ord. 150-1978-005, Sec. 2; Code 1990)

## ARTICLE 7. EXCAVATION DAMAGE PREVENTION PROGRAM

- 4-701. PURPOSE. The City of Hesston recognizes its obligation mandated by Section 192.614 and the final rule implements S 3(a)(2) of the National Gas Pipeline Safety Act of 1968 (49 U.S.C. 1672 (a)(2)) to have a damage prevention program to reduce the risk of excavation damage to buried gas pipelines in populated areas. (Ord. 150-1983-008, Sec. 1)
- 4-702. EXCAVATION ACTIVITIES DEFINED. Excavation Activities shall mean any excavation, including, but not limited to, excavation for any building, structure, underground line, pole, tower foundation, as well as blasting, boring tunneling, backfilling, and including removal of any above or below ground structure by either explosives or mechanical means, as well as any other earth moving operation. (Ord. 150-1983-008, Sec. 4)
- 4-703. SCOPE. This article is applicable to the location of all gas lines located on public right-of-ways, or city owned easements. This article does not pertain to the privately owned gas service lines. (Ord. 150-1983-008, Sec. 5)
- 4-704. LOCATION OF GAS LINES. The city shall provide the location of all gas lines on public right-of-way and/or city owned easements upon request of an applicant for a natural gas excavation permit. (Ord. 150-1983-008, Sec. 6; Code 1990)
- 4-705. NATURAL GAS EXCAVATION PERMIT. It shall be unlawful for any person to conduct any excavation activities near a natural gas line without obtaining a natural gas excavation permit from the city clerk. The application for such permit shall be made on a form supplied by the city and the permit obtained before any excavation activities are commenced. (Ord. 150-1983-008, Sec. 7; Code 1990)
- 4-706. SAME; APPLICATION INFORMATION REQUIRED. The application for a natural gas excavation permit shall contain, but not be limited to, the following information:
- (a) The name and address of the applicant.
  - (b) The time and date of commencement of the activities.
  - (c) The date of application.
  - (d) The telephone number of the applicant.
  - (e) A description of the project, including footage involved if applicable.
  - (f) Estimated time and date for completion of the project.
  - (g) Evidence of insurance coverage.
  - (h) Dates of inspection by the city and final approval date by the city.
  - (i) Such other information as may be pertinent to the issuance of the required permit.
- (Ord. 150-1983-008, Sec. 7; Code 1990)
- 4-707. SAME; FEE. If the application is approved by the city, the city clerk shall issue a permit upon payment of a fee of \$5.00. Each permit issued under the provisions of this section shall cover only one specified excavation. (Ord. 150-1983-008, Sec. 7; Code 1990)

- 4-708.           REQUEST FOR INSPECTION. Upon the completion of any gas pipeline excavation work covered by this article, it shall be the duty of the person doing such work to notify the building inspector and request that it be inspected; after which such work shall be inspected promptly as hereinafter provided.  
(Ord. 150-1983-008, Sec. 9; Code 1990)
- 4-709.           INSURANCE. All excavators seeking a permit under the provisions of this article shall procure and maintain a liability insurance policy in the amount of \$300,000 general liability single limit or \$100,000 for the death or injury of any one person and \$300,000 for the death or injury of any number of persons in any one accident and \$100,000 for property damage in any one accident. Such policies of insurance shall be issued by some insurance company authorized to do business in the State of Kansas. An excavator may qualify as to the insurance requirements by filing a certificate with the city clerk executed by the resident agent of such company stating that the required policy of insurance has been issued by such company for the purpose required by this article and that such insurer will not cancel the policy except upon giving 10 days notice in writing to the city; and that the certificate shall be filed for an annual period beginning January 1 and ending December 31 of such year.  
(Ord. 150-1983-008, Sec. 11; Code 1990)
- 4-710.           BLASTING INSURANCE. (a) If blasting is required on the project a special blasting insurance policy, provided by the applicant, shall be provided in an amount designated by the city administrator.  
                  (b) If permission is granted for blasting, the city, or the applicant, must provide a leak detection survey which will be performed prior to acceptance by the city.  
(Ord. 150-1983-008, Sec. 8)
- 4-711.           EMERGENCY CALL PROCEDURE. The city does provide on call service in and after normal working periods by requests made to the Emergency 911 telephone number of the Harvey County Communications Center.  
(Ord. 150-1983-008, Sec. 10; Code 1990)



## CHAPTER V. BUSINESS REGULATIONS

### Article 1. Solicitors, Canvassers, Peddlers

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#### ARTICLE 1. SOLICITORS, CANVASSERS, PEDDLERS

5-101.

DEFINITIONS. For the purpose of this article, the following words shall be considered to have the following meanings:

(a) Soliciting - shall mean and include any one or more of the following activities:

(1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or

(2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or

(3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

(b) Residence - shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

(c) Canvasser or Solicitor - shall mean any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not. Such definition shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

(d) Peddler - shall mean any person, whether a resident of the city or not, traveling by foot, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad boxcar or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler.

(e) Transient merchant, itinerant merchant or itinerant vendor - are defined as any person, whether as owner, agent, consignee or employee, whether a

resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

(f) Vehicular Vendor - shall mean all persons engaged in the business of selling food products from a vehicle, self-powered or otherwise, on the public and private streets and sidewalks of the city; provided that the words vehicular vendor shall not include salesperson who use vehicles to go from place to place for the purpose of making sales on the premises of a prospective purchaser.

(g) Place of Business - shall mean a place where food products, sales items, inventory or other such stock are stored or dispensed to vehicular vendors. (Code 1994; Ord. 010-1994-092, Sec. 1)

5-102. LICENSE REQUIRED. (a) It shall be unlawful for any person to engage in any of the activities defined in section 5-101 without having first secured a valid city license for each place of business operated within the city, and also for each vehicle to be used in the operation of any such business.

(b) The governing body may waive the license requirements of this section for any person, firm or corporation exempt from the payment of a license fee under section 5-107(d). (Ord. 010-1994-092, Sec. 1)

5-103. SAME; APPLICATION REQUIRED. Before the city clerk may issue any license required by this article, he or she shall require a sworn application in writing prepared in duplicate on a form to be supplied by the city clerk which shall give the following information:

(a) Name and description of applicant;  
(b) Permanent home address and full local address of applicant;  
(c) Identification of applicant including drivers license number, date of birth, expiration date of license and description of applicant;

(d) Identification of vehicle used by applicant including license therefor used by applicant in conducting his or her business;

(e) A brief description of the nature of the business to be carried on or the goods to be sold and the length of time such applicant has been engaged in the business;

(f) If employed, the name and address of the employer, together with credentials establishing such relationship, including the authority by the employer authorizing the applicant to represent the employer in conducting business;

(g) The length of time which business is proposed to be carried on;

(h) The place where services are to be performed or where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;

(i) A statement as to whether or not the applicant has within two years prior to the date of the application been convicted of any crime, misdemeanor (other than minor traffic violations) or violation of any municipal law regulating peddlers, solicitors or canvassers and giving the nature of the offenses, the punishment assessed therefor, if any, and the city and state where conviction occurred.

(j) A list of vehicles to be used in the operation including identification numbers and ownership.

(k) A copy of a valid Kansas Department of Health and Environment Food Handlers license and a copy of the most current health officer inspection record.

(l) A copy of the applicant's Kansas Sales Tax number.

(Ord. 010-1994-092, Sec. 1; Code 2007)

5-104.

ISSUANCE; COUNTY RESIDENTS. (a) Except as provided in section 5-109, if the applicant is a current resident of Harvey County, Kansas, upon receipt of an application for a license and payment of the license fee, the city clerk shall issue the license. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. The city clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the chief of police. The licensee shall carry the license certificate at all times.

(b) If the applicant is not a current resident of Harvey County, Kansas, a license will not be issued until after investigation and payment of the investigation fee as provided in sections 5-105:106.

(Code 1990)

5-105.

SAME; INVESTIGATION AND ISSUANCE; NON-COUNTY RESIDENT.

(a) Upon receipt of the above application from an applicant who is not a current resident of Harvey County, Kansas, the city clerk shall refer the same to the chief of police who shall cause an investigation of the fact stated therein to be made within not to exceed five days.

(b) If as a result of the investigation, the applicant's character or business responsibility is found to be unsatisfactory or the facts stated therein to be untrue, the chief of police shall endorse on such application his or her findings and endorse his or her disapproval of the application and the reasons for the same and shall return the application to the city clerk who then shall notify the applicant that his or her application is disapproved and that no license will be issued.

(c) If however, the investigation of such application discloses that the character and business responsibility and the facts stated in the application are satisfactory and true, the chief of police shall endorse his or her findings and approval on the application and return the same to the city clerk who shall, upon payment of the license and investigation fees prescribed, issue a license to the applicant to engage in the business described in the application. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. The city clerk shall keep a

permanent record of all such licenses issued and submit a copy of such license to the chief of police. The licensee shall carry the license certificate at all times. (Code 1990)

5-106. SAME; INVESTIGATION FEE. At the time of filing the application, a fee of \$25.00 shall be paid to the city clerk to cover the cost of investigation of the facts stated in the foregoing application. (Code 1990)

5-107. LICENSE FEE; TIME LIMITS; EXEMPTIONS. (a) Except as provided in subsections (c) and (d), the fee for the license required pursuant to section 5-102 shall be in the amount of \$5.00 per person, per each day, or portion thereof, that the licensee shall operate within the city limits.

(b) Any such license granted upon application as required hereinabove shall be limited to and effective only on the days set out in the license. Solicitation or sales by any peddler, solicitor or canvasser shall be conducted only between the hours of 8 a.m. and 8 p.m.

(c) No license fee shall be required of: (1) any person selling products of the farm or orchard actually produced by the seller; and (2) any businesses, trades or occupations which are part of fairs or celebrations sponsored by the city or any other governmental subdivision, or the state, or when part of all of the expenses of the fairs or celebrations are paid for by the city, any other governmental subdivision, the state, or chamber of commerce, charitable.

(d) The license fee shall be \$25.00 for each vehicular vendor vehicle to be licensed.

(e) All licenses shall expire at 12:00 midnight on December 31st following issuance; and the full amount of the license fee shall be paid regardless of the time of year in which license is issued.

(K.S.A. 12-1617; Ord. 010-1994-092, Sec. 1)

5-108. RENEWAL. The city clerk need not require an additional application under section 5-103 or an additional investigation and investigation fee under sections 5-105:106 unless complaints have been received of violations of the conditions under which any license has heretofore been issued. The city clerk shall not renew or extend any license where there is satisfactory evidence of any grounds for the suspension or revocation of any prior license, and the applicant shall be required to apply for a license as in the case of an original license. (Code 1990)

5-109. DENIAL, REVOCATION OR SUSPENSION OF LICENSE; NOTICE. (a) The city clerk or chief of police may deny any application or may revoke or suspend for a period of not to exceed 30 days any license issued under this article, 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) Conducting a business as defined in section 5-101 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 city. Notice of the denial, revocation or suspension of a license shall be given in writing to the applicant or

mailed to his or her last known address and the city clerk shall set forth the grounds of such denial, revocation or suspension. (5) Conviction of the crime of theft, larceny, fraud, embezzlement or any felony within two years prior to the application date.

(Code 1990)

5-110. APPEAL TO GOVERNING BODY. (a) Any person aggrieved by the action of the chief of police or city clerk in the denial of an application or revocation or suspension of a license as provided in this article, shall have the right of appeal to the governing body.

(b) Such appeal shall be taken by filing with the city clerk within 14 days after notice of revocation, suspension or denial of the license has been given to or mailed to such applicant's last known address and setting forth the grounds for appeal.

(c) The governing body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of denial, revocation or suspension.

(d) The decision and order of the governing body on such appeal shall be final and conclusive.

(Code 1990)

5-111. REGULATIONS. (a) It shall be unlawful for any licensee to make false or fraudulent statements concerning the quality of nature of his or her goods, wares and merchandise for the purpose of inducing another to purchase the same.

(b) Licensees are required to exhibit their license at the request of any person to whom they attempt to sell their goods, wares and merchandise or take orders for future delivery of the same.

(c) The licensee's place of business and vehicles as defined in section 5-101 shall be subject to periodic reinspection throughout the license period by the Harvey County health officer and chief of police or their representatives. If an unsatisfactory sanitary, mechanical, or operational condition is noted by an inspector, the licensee shall remedy the same without delay. Failure to so remedy an unsatisfactory condition shall be cause for revocation of the applicable license.

(Code 1990; Ord. 010-1994-092, Sec. 1)

5-112. USE OF STREETS AND SIDEWALKS. Except when authorized in writing by the city, no peddler, solicitor, canvasser, vehicular vendor or any other person shall have an exclusive right to any location in the public or private streets or sidewalks for any purpose of selling or soliciting sales, nor shall any person be permitted to operate in the sidewalks and streets within fire lanes or any congested area where the operation might impede or unduly inconvenience the public. No person shall be permitted a stationary location on a street, sidewalk or upon public property, when operating as a vehicular vendor. Vehicular vendors shall rigidly observe traffic regulations and safety standards while operating on public streets, sidewalks and public property. (Ord. 010-1994-092, Sec. 1)

5-113. DISTURBING THE PEACE. Except when authorized in writing by the city clerk, no licensee nor any person in his or her behalf, shall use any sound device, including any loud-speaking radio or sound-amplifying system upon any of the streets, alleys, parks or other public places of the city or upon any private premises

in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell. (Code 1990)

## CHAPTER VI. ELECTIONS

### Article 1. City Elections

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#### ARTICLE 1. CITY ELECTIONS

- 6-101. CONDUCT OF ELECTION. The election of city officials shall be conducted in all respects as provided by the laws of Kansas governing the holding of city elections. (K.S.A. 25-2101 *et seq.*; Code 1990)
- 6-102. HOURS OF VOTING. At all city elections the polls shall be open at 7:00 a.m. and close at 7:00 p.m., unless different hours are set and publicly announced by the county election officer. (K.S.A. 25-2111, 26-206; Code 1990)
- 6-103. ELECTIONS; TIMING; CONDUCT. (a) A regular City election shall be held on the Tuesday succeeding the first Monday in November of each odd numbered year.
- (b) At regular City elections, the candidates for council members receiving the two or three highest number of votes (as the case may be) and the candidate for Mayor receiving the highest number of votes shall be declared elected. Whenever there is a tie vote for two or more candidates and it is necessary to determine which candidate receives the office, the winner shall be determined by lot by the board of canvassers. The City Clerk shall, within three days after the canvass of the returns and determination by the board of canvassers of the persons elected, deliver to such persons a certificate of election, signed by him or her and sealed with the seal of the City; and such certificate shall constitute notice of election. (C.O. 140-2016-040, Sec. 3)
- (c) Elections for City office shall be non-partisan. Any person desiring to become a candidate for an elected city office shall file such declaration of candidacy and pay any fee as required by Kansas law. If Kansas law requires a nomination petition, it must be signed by at least ten (10) qualified electors of the City.
- 6-104. COMMENCEMENT OF TERMS OF OFFICE; OATH OF OFFICE. (a) The county election officer who conducts the City election shall promptly certify to the City Governing Body the determination of election results made by the county board of canvassers. The term of office shall commence on the second Monday in January following certification of the election. Terms otherwise expiring in April 2017 and April 2019 shall be extended to January of the next succeeding year in accordance with Kansas law.
- (b) Every person elected or appointed to City office, before entering upon he duties of such office, shall take and subscribe an oath or affirmation as specified in K.S.A. 54-106, and amendments thereto, and every such oath or affirmation shall be filed with the City Clerk. (C.O. 140-2016-040, Sec. 3)

## CHAPTER VII. FIRE

- Article 1. Fire Department
- Article 2. Fire Prevention
- Article 3. Fireworks

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### ARTICLE 1. FIRE DEPARTMENT

- 7-101. CITY FIRE DEPARTMENT ESTABLISHED. The fire department of the city is hereby established and the department shall be organized to consist of a director of emergency services, at least one assistant fire chief, other officers as needed and firefighters. The director of emergency services shall be appointed by the mayor and confirmed by the governing body. Members of the fire department shall be appointed by the director of emergency services.  
(Ord. 010-2004-149; Code 2007)
- 7-102. MEMBERSHIP; FIRE DRILL; COMPENSATION. Members of the fire department shall all be volunteers. They shall meet at least once each month for practice and drill. The director of emergency services shall keep a record of attendance of such meetings. Any member who is absent six consecutive meetings may be expelled from membership. The director and members of the fire department may be compensated for meetings, fire calls, and extra duties as designated by the director, at an hourly rate of pay which shall be established annually by the governing body of the city. (Ord. 010-2004-149; Code 2007)
- 7-103. SUPERVISION OF DEPARTMENT. The director of emergency services shall be under the supervision of the city administrator and shall have immediate superintendency and control over and be responsible for the care and condition of the fire apparatus and equipment. It shall be the director's duty to see that all such apparatus and equipment is ready at all times for immediate use.  
(Ord. 010-2004-149; Code 2007)
- 7-104. DIRECTOR OF EMERGENCY SERVICES; POWERS. (a) The director of emergency services shall be responsible for the discipline of the members and is hereby given authority to suspend or expel any member for refusal to obey orders for misconduct or failure to do his or her duty at a fire, or for violation of department rules and regulations.  
(b) The director shall also have the right to summon any and all persons present to aid in extinguishing a fire or to aid in removing personal property from any building on fire or in danger thereof and in guarding the same.  
(c) At fires the director shall have full power, control and command of all persons present and shall direct the use of the fire apparatus and equipment, and command the fire fighters in the discharge of their duties. He or she shall take such measures as he or she shall deem proper and necessary in the preservation and protection of property and extinguishing of fires.  
(Ord. 010-2004-149; Code 2007)



- 7-105. SAME; RECORDS. The director of emergency services shall keep in convenient form a complete record of all fires. Such information shall include the time and location, construction of building, owner, occupancy, how extinguished, value of building and contents, members responding to the alarm, and any other information deemed advisable. (Ord. 010-2004-149; Code 2007)
- 7-106. ASSISTANT CHIEF. In the absence of the director, the assistant fire chief shall perform all the duties and have all the authority and responsibility of the director as conferred by this chapter. (Ord. 010-2004-149; Code 2007)
- 7-107. PRIVATE USE OF FIRE EQUIPMENT. It shall be unlawful for any person or persons to take away or use any fire apparatus or equipment for any private purpose or for any person willfully and without proper authority to remove, take away, keep or conceal any tool, appliance, equipment or other article used in any way by the fire department. (Ord. 020-1965-010, Sec. 13; Code 1990)
- 7-108. FIRE EQUIPMENT; EMERGENCY RIGHT-OF-WAY AND USE. (a) All fire apparatus and equipment is hereby given and granted the exclusive right-of-way over and through all streets, avenues, alleys and public thoroughfares in the city while enroute to fires or in response to any alarm, and it shall be unlawful for any person or persons to in any manner obstruct or hinder the apparatus or equipment.  
(b) All emergency vehicles of the fire department, while proceeding on official business, shall be operated in strict accordance with the requirements of the Kansas Statutes regarding the operation of emergency vehicles, and rules of the city fire department, each departmental member assigned to the operation of emergency vehicles shall familiarize himself or herself with the requirements of the law and of rules, govern himself or herself accordingly. Any operator violating the provisions of the state law or department regulations shall be liable for disciplinary action.  
(Ord. 020-1965-010, Sec. 9; Code 1990)
- 7-109. SAME; FIRE HOSE. It shall be unlawful for any person or persons to drive any vehicle over any fire hose laid on any street, alley or lot. This section shall not apply to any apparatus or vehicle being driven by members of the fire department.  
(Ord. 020-1965-010, Sec. 10; Code 1990)
- 7-110. OBSTRUCTION OF FIRE HYDRANT. It shall be unlawful for any person to place or cause to be placed upon or about any fire hydrant any rubbish, building material, fence or other obstruction of any character, or in any manner obstruct, hinder, or delay the fire department in the performance of its duties in case of fire. Nor shall any person fasten to any fire hydrant any guy rope or brace, nor stand any vehicle within 15 feet of any such hydrant.  
(Ord. 020-1965-010, Sec. 11; Code 1990)
- 7-111. FALSE ALARM. It shall be unlawful for any person to knowingly make or sound or cause to be made or sounded, or by any other means, any false alarm.  
(Ord. 020-1965-010, Sec. 12)

## ARTICLE 2. FIRE PREVENTION

- 7-201. FIRE PREVENTION CODE INCORPORATED. There is hereby adopted by the governing body of the city, for the purpose of prescribing regulations, governing conditions hazardous to life and property from fire or explosion, that certain code and standards known as the International Fire Code, edition of 2012, including all the Appendix chapters, as published by the International Code Council, be and is hereby adopted as the Fire Code of the City of Hesston, in the State of Kansas regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all regulations, provisions, penalties, conditions and terms of said Fire Code of the City of Hesston are hereby referred to, save and except such portions as hereinafter deleted, modified or amended by section 7-203 of this article; one copy of said Code has been and are now filed in the office of the clerk of the City of Hesston, Kansas, and the same are hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city.  
(Ord. 020-2004-109; Code 2007)
- 7-202. SAME; ENFORCEMENT. The code hereby adopted shall be enforced by the director of emergency services. (Ord. 010-2004-149; Code 2007)
- 7-203. SAME; AMENDMENTS. (a) Wherever the word municipality is used in the code hereby adopted, it shall be held to mean the City of Hesston.  
(b) Article 13, Fireworks, of the Fire Prevention Code is hereby deleted in its entirety.  
(Ord. 130-1969-007, Sec. 2; Code 1990)
- 7-204. CLARIFICATION; MODIFICATION. (a) The governing body shall be the final determiner of the scope and meaning of all provisions of the fire prevention code which may be unclear, ambiguous, or requiring interpretation.  
(b) The director of emergency services shall have power to modify any of the provisions of the fire prevention code upon application in writing by the owner or lessee or his or her authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code. In approving modifications, the director of emergency services shall see that the spirit of the code is observed, public safety secured and substantial justice done. The particulars of a modification when granted or allowed and the decision of the director of emergency services thereon shall be entered upon the records of the director of emergency services and a signed copy shall be furnished to the applicant.  
(Ord. 010-2004-149; Code 2007)
- 7-205. OPEN BURNING. It shall be unlawful for any person to build or kindle a fire within the city limits except in parks or on private property in ovens, stoves, or grills made for that purpose. This section shall not apply to fire department activities, Cross Winds Conference Center and/or in areas zoned agricultural or residential

suburban that are inspected and authorized by the Director of Emergency Services or designee prior to burning. Burning of trash or lumber is prohibited. (Ord. 20-2004-113, Sec. 1; Code2007)

- 7-206. ACCUMULATION OF RUBBISH AND TRASH. It shall be unlawful for any person to allow to accumulate or to keep in any part of any building or outside of and adjacent to any building or in any alley, sidewalk, street or premises within 30 feet of any building any rubbish, trash, waste paper, excelsior, empty boxes, barrels or other combustibles which shall constitute a fire hazard. (Code 1990)
- 7-207. STACKING OF HAY OR STRAW. It shall be unlawful for any person to deposit, stack or store any hay or straw within 500 feet of any building located inside the fire limits of the city. The director of emergency services may in the interest of commerce issue a temporary permit allowing such depositing, stacking or storing of hay or straw for the purpose of conducting a sale. (Ord. 010-2004-149; Code 2007)
- 7-208. KEEPING OF PACKING MATERIALS. It shall be unlawful to keep excelsior or other packing material in any other than metal or wood metal line boxes or bins having self-closing or automatic covers. All refuse and trash from rooms where packing or unpacking is done shall be removed daily. (Code 1990)
- 7-209. STORAGE OF ASHES. It shall be unlawful to store ashes inside of any nonfireproof building unless they are stored in a noncombustible container or receptacle, and a clearance of at least five feet shall be maintained between such container or receptacle and any combustible materials not placed therein. Ashes shall not be stored outside of any building in wooden, plastic, or paper product receptacles or dumped in contact with or in close proximity to any combustible materials. (Code 1990)
- 7-210. FILLING GASOLINE TANKS OF MOTOR VEHICLES. The engines of motor vehicles shall be stopped when the gasoline tanks of such vehicles are being filled with gasoline at service stations or other places where gasoline is supplied to motor vehicles. The driver or person in control of such vehicle when the gasoline tank of same is being filled who refuses, neglects or fails to stop the engine of such vehicle shall likewise be guilty of a violation of this code. (Code 1990)
- 7-211. FIRE HAZARDS GENERALLY. It is unlawful for any person to cause or create anywhere within the city, or to permit on any premises under his or her control, any situation or condition that is conducive to or likely to cause or permit the outbreak of fire or the spreading of fire. Any situation or condition conducive to the outbreak of or spreading of fire, is declared to be a fire hazard.  
The violation of or failure to comply with any law pertaining to the storage, handling or use of inflammable oils, explosives, liquefied petroleum gases, or fertilizers and all wires and other conductors charged with electricity, is declared to be a fire hazard. The placing of stools, chairs or any other obstruction in the aisles, hallways, doorway, or exit of any theater, public hall, auditorium, church or other place of indoor public assemblage, or the failure to provide any such place of public assemblage with sufficient, accessible and unobstructed fire exits and escapes is also declared to be a fire hazard. The obstruction of any street, avenue, alley, fire

hydrant or any other condition that might delay the fire department in fighting fire is declared to be unlawful.  
(Code 1990)

7-212. SAME; INSPECTIONS TO DISCOVER. It shall be the duty of the director of emergency services to inspect or cause to be inspected by fire department officers or members, as often as may be necessary for the purpose of discovering the violation of any fire preventive law or any fire hazard and ascertaining and causing to be corrected any conditions liable to cause fires and to see that all places of public assemblage, hotels and rooming houses have sufficient and unobstructed facilities for escape therefrom in case of fire. (Ord. 010-2004-149; Code 2007)

7-213. ABATEMENT OF FIRE HAZARDS; ISSUING ORDER. Whenever any officer or member of the fire department shall find or discover any fire hazard or shall find in any building or upon any premises combustible or explosive material or dangerous accumulation of rubbish or unnecessary accumulation of paper, boxes, shavings or any other inflammable material, so situated as to endanger property by the probability of fire, or shall find or discover any violation of this chapter or any other law hazardous to public safety from fires, the director of emergency services shall order the fire hazard or danger from the fire forthwith abated and remedied and such order shall be complied with immediately by the owner or occupant of such buildings or premises. If the hazard or condition ordered abated and remedied is a violation of, or a failure to comply with any law, the director of emergency services shall report the matter to the city attorney and he or she shall, if he or she deems it advisable, prosecute the offender.  
(Ord. 010-2004-149; Code 2007)

7-214. SAME; SERVICE OF ORDER; RECORDS. Any order made under section 7-212 shall be in writing and may be served personally upon the owner or occupant of the premises or by leaving it with any person in charge of the premises or if the premises are unoccupied and the owner is a nonresident of the city, then by mailing a copy to the owner's last known post-office address. One notice to either the occupant or owner shall be sufficient. The director of emergency services shall keep a record of and copies of all such orders and notices and shall follow up such notices at the expiration of the time for compliance therewith and when complied with make proper entry, and if not complied with, file complaint with the municipal court against the property owner and/or occupant.  
(Ord. 010-2004-149; Code 2007)

### ARTICLE 3. FIREWORKS

- 7-301. FIREWORKS DEFINED. For purposes of this article, the term "fireworks" shall mean those items as defined by the rules and regulations of the Kansas state fire marshal, and shall include but not be limited to: firecrackers, torpedoes, sparklers, Roman candles, sky rockets, pin wheels, cap or toy pistols (except such pistols or any like device designed to discharge paper caps containing not more than .25 of grains of explosive mixture), canes, bombs, cannons or other like devices and all classes of fireworks that may be shot into the air or propelled over the ground by explosive discharges or any device using blank cartridges.  
(Code 1990)
- 7-302. FIREWORKS PROHIBITED. (a) Except as provided in sections 7-303:306; it shall be unlawful for any person, firm or corporation to keep, store, display for sale, fire, discharge or explode any fireworks.  
(b) Nothing in this article shall be construed as applying to:  
(1) Toy paper caps containing not more than .25 of a grain of explosive composition per cap;  
(2) The manufacture, storage, sale or authorized use of signals necessary for the safe operation of railroads or other classes of public or private transportation;  
(3) The military or naval forces of the United States or of this state while in the performance of official duty;  
(4) Law enforcement officers while in the performance of official duty; or  
(5) The sale or use of blank cartridges for ceremonial, theatrical or athletic events.  
(Code 1990)
- 7-303. SAME: EXCEPTIONS; DISCHARGES. (a) Section 7-302 of this article shall not apply to the fire or discharge of class "C" fireworks, not including bottle rockets, in the city between the hours of 8:00 a.m. and 12:00 midnight on July 4th and between the hours of 8:00 a.m. and 10:00 p.m. on other dates specified by the governing body. The governing body shall annually select the dates specified herein on or before April 1st of each calendar year.  
(b) The governing body of the city may, in its discretion and through its appointed authority, grant permission for private educational fireworks discharge seminars or for the public display of fireworks by responsible individuals or organizations when such seminars or displays shall be of such a character and so located that the discharge and firing shall not be a fire hazard or endanger persons or surrounding property.  
(c) It shall be unlawful for any person, firm or corporation to give any public display or conduct any educational seminar for discharge of fireworks without first obtaining required permits, licenses or authorization as set forth in section 7-306.  
(Ord. 020-1993-062, Sec. 1; Ord. 010-1998-116; Code 2003)
- 7-304. SAME: EXCEPTION; SALE OF FIREWORKS. Any person, firm, or corporation who or which has first obtained a valid permit to sell class "C" fireworks, not including bottle rockets, within the city may do so between the hours of 8:00 a.m. and 12:00 midnight on dates specified by the governing body. The governing body shall

annually select the dates specified herein on or before April 1st of each calendar year.

(Ord. 020-1993-062, Sec. 1; Ord. 010-1998-116; Code 2003)

7-305.

**PERMIT FOR SALE OF FIREWORKS REQUIRED; FEE; ISSUANCE.** (a) It shall be unlawful for any person, firm or corporation to sell, display for sell, offer to sell or give away any type of fireworks within the city without first paying a fee per establishment or premises to the city clerk and applying for and securing a permit therefor on or before June 25th of the permit year. The governing body shall annually set the fee specified herein on or before April 1st of each calendar year.

(b) No permit shall be issued for any location where retail sales are not permitted under the zoning laws. Prior to the issuance of the permit, an inspection will be made of the applicant's facility for compliance with this chapter and other pertinent laws, and no permit shall be issued for any premises not in compliance with such laws. Upon qualifying for the permit, the permittee shall prominently display the same at the establishment or premises where fireworks are to be sold or displayed for sale. The permit fee shall not be refundable upon failure to qualify for the permit or withdrawal or cancellation of the application or permit.

(Ord. 020-1986-036, Sec. 2; Ord 010-2001-126, Sec. 1; Code 2003)

7-306.

**PERMIT FOR PUBLIC FIREWORKS DISPLAY REQUIRED.** (a) It shall be unlawful for any person, firm or corporation to give or provide a fireworks display for the public or for organized groups without first obtaining a permit to do so by making application at least 20 days in advance of the date of the desired display. Approval of the permit shall be made by the city administrator and the director of emergency services. No permit shall be approved until the applicant furnishes a certificate of public liability insurance for the desired display in a minimum amount of \$500,000. Such certificate of insurance must be written by an insurance carrier licensed to do business in Kansas and must be conditioned as being non-cancelable except by giving 10 days advance written notice to the city. In the event of cancellation of the insurance prior to the display, the permit shall automatically be revoked and shall be null and void. The application for the permit shall be made on such forms as provided by the city clerk.

(b) It shall be unlawful for any person, firm or corporation to hold, give or provide educational seminars, schools or demonstrations for the discharge or firing of public fireworks displays without first obtaining a permit to do so by making application at least 20 days in advance of the desired date for the seminar, school or demonstration. Approval of the permit shall be made by the city administrator and the director of emergency services. No permit shall be approved until the applicant furnishes a certificate of public liability insurance for the educational seminar, school or demonstration in the amount of \$500,000. Such certificate of insurance must be written by an insurance carrier licensed to do business in Kansas and must be conditioned as being non-cancelable except by giving 10 days advance written notice to the city. In the event of cancellation of the insurance prior to the seminar, school, or demonstration the permit shall automatically be revoked and shall be null and void. The application for the permit shall be made on such forms as provided by the city clerk.

(c) No permit shall be issued if the location, nature of the fireworks or other relevant factors are such as to create an undue hazard or risk of harm or damage to persons or property.

(Ord. 010-2004-149; Code 2007)

- 7-307. APPROVED FIREWORKS; BOTTLE ROCKETS PROHIBITED. All fireworks offered for sale and discharged within the city shall be of a type that has been tested and approved for sale and use within the state by the state fire marshal. (Code 1990)
- 7-308. THROWING PROHIBITED. It shall be unlawful for any person to throw, cast or propel fireworks of any kind in the direction of or into the path of any animal, person or group of persons, or from, in the direction of or into any vehicle of any kind. (Code 1990)
- 7-309. SALE OF FIREWORKS; WHERE PROHIBITED. (a) It shall be unlawful for fireworks to be stored, sold or displayed for sale in a place of business where paint, oils, varnishes, turpentine or gasoline or other flammable substances are kept, unless such fireworks are in a separate and distinct section or department of the premises.  
(b) Where the director of emergency services deems there is a fire hazard, he or she is hereby authorized to have such hazard abated.  
(Ord. 010-2004-149; Code 2007)
- 7-310. RETAIL DISPLAY OF FIREWORKS. (a) All retailers are forbidden to expose fireworks where the sun shines through glass on the merchandise displayed, except where such fireworks are in the original package.  
(b) All fireworks displayed for sale must remain in original packages, except where an attendant is on constant duty at all times where such fireworks are on display; provided, that fireworks in open stock may be kept in show cases or counters out of the reach of the public without an attendant being on duty.  
(c) Signs reading "Fireworks for Sale--No Smoking Allowed" shall be displayed in the section of a store or premises set aside for the sale of fireworks.  
(Code 1990)
- 7-311. FIRE EXTINGUISHERS REQUIRED. Two charged and functioning Underwriter Laboratories (UL) listed fire extinguishers of an appropriate type and size must be kept in close proximity to all stocks of fireworks in any building, shed, tent or other such structure where fireworks are stored, sold or displayed for sale. The director of emergency services shall have the authority to determine the appropriate size, type and location of fire extinguishers needed for establishments involved in the storage, sale or display for sale of fireworks.  
(Ord. 010-2004-149; Code 2007)
- 7-312. RESTRICTIONS AS TO GASOLINE INSTALLATIONS. It shall be unlawful to store, keep, sell, display for sale or discharge any fireworks within 100 feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or other such volatile liquids are sold. (Ord. 020-1993-062, Sec. 1)
- 7-313. AUTHORITY OF DIRECTOR OF EMERGENCY SERVICES. The director is authorized to seize and confiscate all fireworks which may be kept, stored or used in violation of any section of this article, and all of the rules of the state fire marshal. He

or she shall dispose of all such fireworks as may be directed by the governing body.  
(Ord. 010-2004-149; Code 2007)



## CHAPTER VIII. HEALTH AND WELFARE

- Article 1. Health Nuisances
- Article 2. Environmental Code
- Article 3. Junked Motor Vehicles on Private Property
- Article 4. Weeds
- Article 5. Minimum Housing Code
- Article 6. Rodent Control
- Article 7. Insurance Proceeds Fund
- Article 8. Smoking and Tobacco Use

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### ARTICLE 1. HEALTH NUISANCES

- 8-101. NUISANCES UNLAWFUL; DEFINED. It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:
- (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 within 24 hours after death;
  - (c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous 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 iceboxes or refrigerators kept on the premises under the control of any person, or deposited on the sanitary landfill, or any icebox or refrigerator 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.  
(K.S.A. 21-4106:4107; Code 2003)
- 8-102. PUBLIC OFFICER. The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2003)
- 8-103. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board

of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. (Code 2003)

8-104. RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists. (Code 2003)

8-105. ORDER OF VIOLATION. (a) The governing body shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-101 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (K.S.A. 12-1617e; Code 2003)

8-106. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of section 8-101. The notice shall also inform the person, corporation, partnership or association that:

(a) He, she or they shall have 10 days from the date of serving the order to abate the condition(s) in violation of section 8-101; or

(b) He, she or they have 10 days from the date of serving the order to request a hearing before the governing body or its designated representative of the matter as provided by section 8-109;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-107 and/or abatement of the condition(s) by the city as provided by section 8-108. (Code 2003)

8-107. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of section 8-101, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after

notice has been served shall constitute an additional or separate offense. (Code 2003)

8-108. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-107, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to section 8-105 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-106, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-110. A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Certified mail, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (Code 2003)

8-109. HEARING. If a hearing is requested within the 10 day period as provided in section 8-106, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8-108. (Code 2003)

8-110. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-108, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (Code 2003)

## ARTICLE 2. ENVIRONMENTAL CODE

- 8-201. TITLE. This article shall be known as the "Environmental Code." (Code 2003)
- 8-202. LEGISLATIVE FINDING OF FACT. The governing body has found that there exist within the city unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided. (Code 2003)
- 8-203. PURPOSE. The purpose of this article is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof. (Code 2003)
- 8-204. RULES OF CONSTRUCTION. For the purpose of this article, the following rules of construction shall apply:
- (1) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."
  - (2) Gender - Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.
  - (3) Number - Words of number shall be construed to mean singular or plural, as may be applicable.
  - (4) Tense - Words of tense shall be construed to mean present or future, as may be applicable.
  - (5) Shall - The word shall is mandatory and not permissive.
- (Code 2003)
- 8-205. DEFINITIONS. The words and phrases listed below when used in this article shall have the following meanings:
- (1) Abandoned Motor Vehicle - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of the code; or incapable of moving under its own power; or in a junked or wrecked condition.
  - (2) Accessory Structure - a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.

(3) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.

(4) Dilapidation, Deterioration or Disrepair - shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.

(5) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.

(6) Garbage - without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.

(7) Person - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.

(8) Premises - any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.

(9) Refuse - garbage and trash.

(10) Residential - used or intended to be used primarily for human habitation.

(11) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.

(12) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.

(13) Weathered - deterioration caused by exposure to the elements.

(14) Yard - the area of the premises not occupied by any structure.

(Code 2003)

8-206. PUBLIC OFFICER. The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2003)

8-207. ENFORCEMENT STANDARDS. No person shall be found in violation of this article unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under section 8-208 but shall not include conditions which are not readily visible from any public place or from any surrounding private property. (Code 2003)

8-208. UNLAWFUL ACTS. It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the city. For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:

(a) Exterior conditions (yard) shall include, but not be limited to, the scattering over or the parking, leaving, depositing or accumulation on the yard of any of the following:

(1) lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse;

(2) abandoned motor vehicles; or

(3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.

(4) nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.

(b) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:

(1) exteriors of any structure;

(2) exteriors of any accessory structure; or

(3) fences, walls, or retaining walls.

(Code 2003)

8-209. ORDER OF VIOLATION. (a) The governing body shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-201 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. The order shall state:

(a) The condition which has caused the violation of this article; and

(b) That the person in violation shall have:

(1) 10 days from the date of the mailing of the notice to alleviate the exterior conditions (yard) violation; and/or;

(2) 45 days from the date of the mailing of the notice to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above,

(3) 10 days from the date of the mailing of the notice to request, as provided in section 8-213 a hearing before the governing body or its designated representative on the matter; and

(c) That failure to alleviate the condition or to request a hearing may result in prosecution under section 8-210 and/or abatement of the condition by the city according to section 8-211 with the costs assessed against the property under section 8-214.

(K.S.A. 12-1617e; Code 2003)

8-210. PENALTY. The public officer may file a complaint in the municipal court against any person found to be in violation of section 8-208, provided however, that such person shall first have been sent a notice as provided in section 8-209 and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-209. Upon such complaint in the municipal court, any person found to be in violation of section 8-208 shall upon conviction be punished by a fine of not less than \$50.00 nor more than \$100.00, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment, for each offense. For the purposes of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist. (Code 2003)

8-211. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-210, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to section 8-205 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-206, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-214.

A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Certified mail, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such



order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (Code 2003)

8-212. HEARING BEFORE GOVERNING BODY. If a hearing is requested within the 15 day period as provided in section 8-209 such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the matter provided in section 8-211. (Code 2003)

8-213. APPEALS. Any person affected by any determination of the governing body under sections 8-211 or 8-212 may appeal such determination in the manner provided by K.S.A. 60-2101. (Code 2003)

8-214. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-211, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (Code 2003)

8-215. CONSTRUCTION. Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this article shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance. (Code 2003)

### ARTICLE 3. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

- 8-301. FINDINGS 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) Serves 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;
  - (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.
- (Code 2003)
- 8-302. DEFINITIONS. As used in this article, unless the context clearly indicates otherwise:
- (a) Inoperable - means 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, without limitation, 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 2003)
- 8-303. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.
- (a) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable:
    - (1) Absence of a current registration plate upon the vehicle;
    - (2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
    - (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.
  - (b) The provisions of this article shall not apply to:
    - (1) Any motor vehicle which is enclosed in a garage or other building;
    - (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
    - (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

(Code 2003)

- 8-304. PUBLIC OFFICER. The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2003)
- 8-305. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. (Code 2003)
- 8-306. RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists. (Code 2003)
- 8-307. ORDER OF VIOLATION. (a) The governing body shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-301 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.
- (b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (K.S.A. 12-1617e; Code 2003)
- 8-308. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of section 8-303. The notice shall also inform the person, corporation, partnership or association that
- (a) He, she or they shall have 10 days from the date of serving the order to abate the condition(s) in violation of section 8-301; or
- (b) He, she or they have 10 days from the date of serving the notice to request a hearing before the governing body or its designated representative of the matter as provided by section 8-309;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-307 and/or abatement of the condition(s) by the city as provided by section 8-310.

(Code 2003)

8-309. FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of section 8-303, be fined in an amount not to exceed \$100.00 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Code 2003)

8-310. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 8-309, the public officer may seek to remedy violations of this article in the following manner. If a person to whom a notice has been sent pursuant to section 8-307 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in section 8-308, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution.

The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-313. A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Service by certified mail, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24 month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail

(Code 2003)

8-311. DISPOSITION OF VEHICLE. Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. Supp. 8-1102, as amended. (Code 2003)

8-312. HEARING. If a hearing is requested within the 10 day period as provided in section 8-308, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right

to contest the findings. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the matter provided in section 8-310. (Code 2003)

- 8-313. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-310, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (Code 2003)

## ARTICLE 4. WEEDS

- 8-401. WEEDS TO BE REMOVED. It shall be unlawful for any 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. (Code 2003)
- 8-402. DEFINITIONS. Weeds - as used herein, means any of the following:
- (a) Brush and woody vines shall be classified as weeds;
  - (b) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
  - (c) Weeds which bear or may bear seeds of a downy or wingy nature.
  - (d) Weeds 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;
  - (e) Weeds and grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 12 inches in height.
- (Ord. 010-1992-084, Sec. 1; Code 2003)
- 8-403. PUBLIC OFFICER; NOTICE TO REMOVE. (a) The city administrator shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written notice to the owner, occupant or agent of such property by certified mail, return receipt requested, or by personal service to cut or destroy weeds; provided, however, that if the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified, return receipt requested, to the last known address of the owner. Such notice shall only be given once per calendar year.
- (b) The notice to be given hereunder shall state:
    - (1) that the owner, occupant or agent in charge of the property is in violation of the city weed control law;
    - (2) that the owner, occupant or agent in control of the property is ordered to cut or destroy the weeds within 10 days of the receipt of the notice;
    - (3) that the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five days of the receipt of the notice or, if the owner is unknown or a nonresident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city newspaper;
    - (4) that if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;

(5) that the owner, occupant or agent in control of the property will be given an opportunity to pay the assessment, and if it is not paid within 30 days of such notice, it will be added to the property tax as a special assessment;

(6) that no further notice will be given during the current calendar year prior to the removal of weeds from the property; and,

(7) that the public officer should be contacted if there are questions regarding the order.

(c) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, 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 to such property is provided notice as required by this article.

(Ord. 010-1992-084, Sec. 1; Code 2003)

8-404.

**ABATEMENT; ASSESSMENT OF COSTS.** (a) If the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified section 8-403, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

(b) If the city abates or removes the nuisance pursuant to this section, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section.

(c) The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(K.S.A. 12-1617f; Ord. 010-1992-084, Sec. 1; Code 2003)

8-405.

**RIGHT OF ENTRY.** The public officer, and the public officer's authorized assistants, employees, 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 article. (Code 2003)

- 8-406. UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute an code violation. (Code 2003)
- 8-407. NOXIOUS WEEDS. (a) 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.
- (b) For the purpose of this article, the term noxious weeds shall mean 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*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), and Johnson grass (*Sorghum halepense*). (K.S.A. 2-1314; Code 2003)



## ARTICLE 5. HOUSING CODE

- 8-501. UNIFORM HOUSING CODE INCORPORATED. There is hereby adopted and incorporated by reference, for the purpose of regulating and controlling the use and occupancy, location and maintenance of all residential buildings and structures within the city that certain housing code known as the Uniform Housing Code, 1985 Edition, recommended by the International Conference of Building Officials, such code being made as a part of the ordinances and code of the city as if the same had been set out in full herein, all as authorized and in the manner prescribed by K.S.A. 12-3009 through 12-3012 including any amendments thereto. No fewer than three copies of the Uniform Housing Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Hesston," and shall be filed with the city clerk to be open to inspection and available to the public at all reasonable hours of business.
- Any person violating any provision of such code shall be punished as provided in section 1-116 of this code.  
(Ord. 130-1969-006, Sec. 1; Code 1990)
- 8-502. ADDITIONAL PROVISIONS. The following sections of this article are in addition to the provisions of the standard code incorporated by reference in section 8-501. (Code 1990)
- 8-503. HOUSING ENFORCEMENT OFFICIAL. There is hereby created the office of housing enforcement official. The housing enforcement official shall be appointed by the city administrator subject to the approval of the governing body.  
(Ord. 130-1969-006, Sec. 2; Code 1990)
- 8-504. SAME; DUTIES. The housing enforcement official shall be responsible for the administration and enforcement of this article.  
(Ord. 130-1969-006, Sec. 4; code 1990)
- 8-504. SAME; RIGHT OF ENTRY. The housing enforcement official, or his or her agent, upon proper identification, shall have authority to enter any building, structure, or premises at any reasonable hour to perform his or her duties as set out in this chapter. (Ord. 130-1969-006, Sec. 5)
- 8-506. APPEALS TO THE GOVERNING BODY. (a) Any person aggrieved by the action of the housing enforcement official in the enforcement of this article, shall have the right to appeal to the governing body.
- (b) Such appeal shall be taken by filing with the city clerk within 14 days after notice of the housing enforcement official's decision has been given to or mailed to such applicant's last known address and setting forth the grounds for appeal.
- (c) The governing body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided in subsection (b) of this section.
- (d) The decision and order of the board of housing appeals on such appeal shall be final and conclusive.  
(Ord. 130-1969-006, Sec. 3; Code 2003)

## ARTICLE 6. RODENT CONTROL

- 8-601. DEFINITIONS. For the purposes of this article, the following words and phrases shall have the following meanings:
- (a) Building. - Any structure, whether public or private, that is adapted for occupancy as a residence, the transaction of business, the rendering of professional services, amusement, the display, sale or storage of goods, wares or merchandise or the performance of work or labor, including office buildings, public buildings, stores, theaters, markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.
  - (b) Occupant. - The person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.
  - (c) Owner. - The owner of any building or structure, whether individual, firm, partnership or corporation.
  - (d) Rat harborage. - Any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.
  - (e) Rat-stoppage. - A form of rat-proofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.  
(Code 1990)
- 8-602. BUILDING MAINTENANCE. All buildings and structures located within the present or future boundaries of the city shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition. (Code 1990)
- 8-603. NOTICE TO RAT-STOP; WHEN CITY TO DO WORK. Upon receipt of written notice from the governing body, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the governing body. (Code 1990)
- 8-604. FAILURE TO COMPLY. If the owner fails to comply with such written notice or extension, then the governing body is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the city clerk shall certify the amount due to the city treasurer and the charge shall be a lien against the property where the work has been done, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage. (Code 1990)

- 8-605.           REPLACE RAT-STOPPAGE. It shall be unlawful for any occupant, owner, contractor, public utility company, plumber or any other person to remove the rat-stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats. (Code 1990)
- 8-606.           NOTICE TO ERADICATE RATS. Whenever the governing body notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof and the city clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the city clerk shall certify the amount due from the owner to the city treasurer, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures. (Code 1990)
- 8-607.           CONDITIONS CONDUCIVE TO HARBORAGE OF RATS. (a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.  
                  (b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.  
                  (c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.  
                  (d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.  
(Code 1990)
- 8-608.           INSPECTIONS. The building inspector is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as may be necessary to determine full compliance with this article. (Code 1990)

## ARTICLE 7. INSURANCE PROCEEDS FUND

- 8-701. 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, arising out of any fire, explosion, or windstorm, 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 article. (Code 1997)
- 8-702. 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, caused by or arising out of any fire, explosion, or windstorm, 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. (Code 1997)
- 8-703. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by section 8-702, the insurer or insurers shall contact the county treasurer, Harvey 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, Harvey County, Kansas. (Code 1997)
- 8-704. SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure. (Code 1997)
- 8-705. 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 treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building inspector 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 chief building inspector shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.  
(Code 2003)

8-706. FUND CREATED; DEPOSIT OF MONEYS. The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account. (Code 1997)

8-707. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this article, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within 20 days of the receipt of said moneys, the chief building inspector 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 chief building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 *et seq.*, as amended.

(d) If the chief building inspector 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 30 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. 12-1750 *et seq.*, as amended, the city treasurer 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 30 days of the receipt of the moneys from the insurance company or companies.  
(Code 1997)

8-708. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief building inspector 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. (Code 1997)

- 8-709. SAME; DISPOSITION OF FUNDS. If the chief building inspector, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of section 8-705(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 chief building inspector 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 treasurer under section 8-705(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred. (Code 1997)
- 8-710. EFFECT UPON INSURANCE POLICIES. This article 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. (Code 1997)
- 8-711. INSURERS; LIABILITY. Insurers complying with this article or attempting in good faith to comply with this article 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 article, or releasing or disclosing any information pursuant to this article. (Code 1997)

## ARTICLE 8. SMOKING AND TOBACCO USE

8-801. DEFINITIONS. The following words and phrases, whenever used in this Article, are defined and shall be construed as follows:

- (a) “Electronic Nicotine Delivery Device” means any product delivering nicotine, nicotine salts, or any other substance that can be used by a person to simulate smoking through inhalation of aerosol or vapor from the product. The term includes, but is not limited to, any electronic cigarette, cigar, cigarillo, pipe, or personal vaporizer.
- (b) “Enclosed Public Places” means the portion or portions of any building, structure or other enclosure of any type to which the public is invited or permitted for the transaction of any business or the engagement in any activities, which building, structure or enclosure (or the public portion thereof) is enclosed by floor-to-ceiling walls and by roof or ceiling structures (exclusive of doors, windows and passageways), and includes the portions thereof provided as public entrances and exits, hallways and passageways, reception areas, lobbies, waiting rooms, elevators and restrooms. Examples of Enclosed Public Places include but are not limited to: retail stores, retail service establishments (including food and/or beverage service establishments and other commercial facilities of all types; professional offices; educational, healthcare, child care and adult day care facilities; indoor recreational and sports facilities; hotels, motels and other places of public accommodation; and convention, conference and meeting facilities.
- (c) “Enclosed Places of Employment” means the portion of any building, structure or other enclosure of any type which is under the possession or control of a public or private employer, which building, structure or enclosure (or the employee- access portion thereof) is enclosed by floor-to-ceiling walls and by roof or ceiling structures (exclusive of doors, windows and passageways), in which the employer’s employees engage in employment-related and other necessary activities, including but not limited to: work areas; lounge, dining and rest areas; restrooms; meeting rooms; and hallways and other passageways.
- (d) “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- (e) “Playground” means any outdoor park or Recreational Area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public grounds of the City, and all appurtenant facilities, indoor or outdoor, located thereon.

- (f) “Public Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- (g) “Public Place” means an area to which the public is invited or in which the public is permitted.
- (h) “Recreational Area” means any outdoor area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, arenas, stadiums, amusement parks, athletic fields, gardens, parks, skate parks, swimming pools, and trails, and all appurtenant facilities, indoor or outdoor, located thereon.
- (i) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

8-802. PLACES WHERE SMOKING PROHIBITED; EXCLUSIONS.

- (a) Smoking shall be prohibited in all of the following places within the City:
  - (1) Enclosed Public Places.
  - (2) Any other portion of a building, structure or enclosure in which one or more Enclosed Public Places is located unless such portion is completely separated from the Enclosed Public Places by solid, structural walls which extend from floor to ceiling, and is so maintained such that, except for brief intermittent incidents, any doors or windows between such portions and any Enclosed Public Places are maintained in a closed position so as to not allow the passage of air from such portions into the Enclosed Public Places.
  - (3) Enclosed Places of Employment.
  - (4) All enclosed facilities and vehicles owned by the City.
  - (5) Areas near public entrances and exits (including park shelter houses and the golf clubhouse), defined as any indoor or outdoor area which is within a radius of twenty (20) feet of a public entrance to or public exit from any building, structure or enclosure



in which one or more Enclosed Public Places is located, or which is within a radius of twenty (20) feet of a ventilation system intake thereto.

- (6) Outdoor restaurant and bar patio areas, defined as any outdoor patio or dining area which is adjacent to a food and/or beverage service establishment and which is provided for the service and consumption of food or beverages.
  - (7) Outdoor bleacher and concession areas, park shelters, etc., defined as (i) the fixed portions of any outdoor stadium, arena, ballfield or other sporting event area which is provided for the use of spectators (such as bleachers and other seating areas), or as public entrances or exits, concession areas, or restrooms, the prohibition extending during the course of any such public event, and for one hour prior to and one hour after such event, and (ii) the portion of a public park as to which a shelter is provided for seating, picnic and other related activities, including a 20- foot perimeter around such park shelter areas.
  - (8) Outdoor property owned, leased, or operated by the City and within twenty (20) feet of the boundaries thereof.
  - (9) Recreational Areas and within twenty (20) feet of the boundaries thereof.
  - (10) Playgrounds and within twenty (20) feet of the boundaries thereof.
  - (11) Outdoor Public Events and within twenty (20) feet of the boundaries thereof;
  - (12) Outdoor vendor areas, defined as any place which is within a radius of twenty (20) feet of any outdoor vendor where food or goods are being offered for sale to the public.
- (b) The following are hereby excluded from the foregoing prohibitions:
- (1) Private residences, except when in use as a licensed childcare, adult day care or health care facility.
  - (2) Except within areas described in Section 8-802(a)(5), the smoking prohibitions herein shall not apply to any outdoor property owned by a private individual or private, non-governmental entity.

- (3) Except within areas described in Section 8-802(a)(5), the smoking prohibitions herein shall not apply to any outdoor areas of the Hesston Municipal Golf Course.
- (4) Private clubs and fraternal organization facilities, defined as the premises of nonprofit fraternal organizations and nonprofit veterans' organizations, as defined in K.S.A. 79-4701, and premises licensed as a class A club under the Kansas Liquor Control Act, K.S.A. 41-101, et seq.
- (5) Hotels, motels, inns, bed-and-breakfast facilities and other facilities for public overnight accommodation may designate up to twenty-five percent (25%) of their sleeping room accommodations as being smoking rooms where smoking is allowed.
- (6) The smoking prohibitions herein shall not apply to any building or facility, or to any meeting or conference room, which has been provided for the exclusive use of others engaged in a private meeting or function, provided that no employees of the building or facility owner or operator, or of a caterer or other person or entity providing services, are present within such area while smoking is occurring.
- (7) The smoking prohibitions herein shall not apply to performers where smoking is part of a stage production.
- (c) "No Smoking" signage shall be posted at all outdoor property owned and operated by the City.

**8-803. RESPONSIBILITIES OF EMPLOYERS, PROPRIETORS, OWNERS AND MANAGERS.**

- (a) It is recommended that the owner, manager or other person having control of a building, structure or enclosure, or of any portion of a building, structure or enclosure, where smoking is prohibited under the terms of this Ordinance conspicuously post signs at each point of entrance thereto clearly stating that smoking is prohibited.
- (b) No person having control of a place, business, office or other establishment or activity subject to this Ordinance shall knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place. Such persons shall take all reasonable steps necessary to prevent or stop smoking in violation of this Ordinance by employees, patrons and visitors in the place, business, office or establishment, including, but not limited to: posting no-smoking signs; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally

asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws.

- (c) No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Ordinance.

8-804. VIOLATIONS AND PENALTIES. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance. It shall also be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation hereunder to fail to comply with all provisions of this Ordinance. Each day that any violation of this Ordinance occurs shall constitute a separate offense. Violation of any of the provisions of the Ordinance shall be punishable as follows:

- (a) By a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, not exceeding Two Hundred Dollars (\$200.00) for a second violation occurring within one (1) year from the date of the first violation, and not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation occurring within one (1) year from the first violation.
- (b) In addition to any applicable penalty above, a violation of this Ordinance by a person having control of an Enclosed Public Place or an Enclosed Place of Employment as defined herein may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (c) At the judge's discretion, the judge may suspend the fine in lieu of attendance by the offender, at his or her own expense, in a smoking cessation program recommended by the local health department including the dangers of smoking, tobacco use, and secondhand smoke, OR the offender may provide five (5) hours of community service, cleaning and maintaining the public parks of the City including cigarette and tobacco product removal.

(Ordinance 010-2019-215)

## CHAPTER IX. MUNICIPAL COURT

### Article 1. General Provisions

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#### ARTICLE 1. GENERAL PROVISIONS

- 9-101. MUNICIPAL COURT ESTABLISHED. There is hereby established a municipal court for the City of Hesston, Kansas. The municipal court shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. (Code 1990)
- 9-102. SAME; 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 shall govern the practice and procedure in all cases in the municipal court. (Code 1990)
- 9-103. TIME AND PLACE OF SESSIONS. Municipal court shall be held at such time and place as designated by the municipal judge. (Code 1990)
- 9-104. MUNICIPAL JUDGE; APPOINTMENT. The municipal court shall be presided over by a municipal judge. The mayor, subject to the approval of the city council, shall appoint the judge of the municipal court. (Code 1990)
- 9-105. SAME; ABSENCE; VACANCY; PRO TEM. In the event the municipal judge is temporarily unable to preside due to absence, illness or disqualification, the municipal judge shall designate an attorney to act as judge pro tempore. In the event the municipal judge fails to appoint a judge pro tempore, the judge pro tempore shall be appointed in the same manner as the municipal judge is selected. The judge pro tempore shall receive compensation as shall be provided by ordinance, payable in the same manner as the compensation of the regular municipal judge.  
In the event a vacancy shall occur in the office of municipal judge, a successor shall be appointed to fill the unexpired term in the same manner as the municipal judge was appointed. (K.S.A. 12-4107; Code 1990)
- 9-106. SAME; POWERS AND DUTIES. The municipal judge shall 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. (Code 1990)
- 9-107. SAME; SALARY. The municipal judge shall receive a salary as shall be fixed by ordinance. (Code 1990)
- 9-108. COURT CLERK. There is hereby established the office of the clerk of the municipal court of the City of Hesston, Kansas, which office shall be filled by appointment by the municipal judge of the municipal court. The duties of the office

shall be those prescribed by the Code for Municipal Courts set forth in Chapter 12, Article 41 of the Kansas Statutes, and shall include the following duties:

(a) The clerk shall issue all process of the court, administer oaths, file and preserve all papers, docket cases and set same for trial and shall perform such further acts as may be necessary to carry out the duties and responsibilities of the court. The clerk shall receive, account for and pay to the city treasurer daily all fines and forfeited bonds paid into the court. The clerk shall make reports to the judicial administrator and furnish the information when requested by him, her or a departmental justice on such forms furnished by the judicial administrator, and approved by the supreme court.

(b) The clerk of the municipal court shall within 10 days after selection and before entering upon the duties of office, execute to the city such bond as the governing body may require, which shall be approved by the governing body, and file in the office of the city clerk, conditioned for the faithful performance of the duties required of him or her by law, and for the faithful application and payment of all moneys that may come into his or her hands in the execution of the duties of the office. The city shall pay the cost of such bond.

(c) The city administrator may remove the clerk appointed under the authority of this article.

(Code 1990)

9-109. PAYMENT OF FINE. Where a municipal court judgment against any person results in a fine and/or court costs only, the same shall be satisfied by paying the amount of such fine and/or court costs to the municipal court immediately on the rendition of judgment, or at such time as the municipal judge shall determine.  
(Code 1990)

9-110. SAME; FAILURE TO PAY SEPARATE VIOLATION. It shall be unlawful for any person to willfully fail to pay any lawfully imposed fine for a violation of any law of the city within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due. Such conduct constitutes a violation of this article, regardless of the full payment of the fine after such time.  
(Code 1990)

9-111. FAILURE TO APPEAR. (a) It shall be unlawful for any person charged with violation of any law of the city to fail to appear before the municipal court when so scheduled to appear, unless lawful excuse for absence is presented to the court on or before the time and date scheduled for appearance.

(b) For the purpose of subsection (a), failure to appear shall include willfully incurring a forfeiture of an appearance bond and failure to surrender oneself within 30 days following the date of such forfeiture by one who is charged with a violation of the laws of the city and has been released on bond for appearance before the municipal court for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after his or her conviction of a violation of the laws of the city has become final by one who has been released on an appearance bond by any court of this state.

(c) Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons, notice to appear, or traffic citation duly served upon him or her personally shall be deemed a person released on bond for appearance within the meaning of subsection (b) of this section.

(d) Failure to appear, upon conviction thereof, shall be punishable by incarceration for up to 30 days and/or a fine of up to \$250.00.  
(Code 1990)

9-112 COURT COSTS. (a) Municipal court costs are hereby set as follows:

- (1) Base costs in cases before the municipal court shall be \$90.00. These costs are itemized as follows:
  - (a) \$66.50 for City operation of the municipal court system;
  - (b) \$11.50 for State imposed Law Enforcement Training Center Fund;
  - (c) \$1.00 for local law Enforcement Training Reimbursement Fund;
  - (d) \$5.00 for Kansas Commission on Peace Officers' Standards and Training Fund;
  - (e) \$2.00 for Juvenile Detention Facilities Fund;
  - (f) \$0.50 for Protection from Abuse Fund;
  - (g) \$0.50 for Crime Victims Assistance Fund;
  - (h) \$1.00 for Trauma Fund;
  - (i) \$1.00 for State imposed Municipal Judges Training Program;
  - (j) \$1.00 for Department of Corrections Forensic Psychologist Fund;
- (2) Warrants or bench warrants ordered for failure to appear will be \$25.00.
- (3) The base court costs shall not be imposed for violations of any ordinance or resolution relating to unlawful parking. These charges shall be assessed in addition to and not in lieu of the fees and mileage of witnesses, which may be assessed in accordance with K.S.A. 12-4411 (Ord. No. 140-1987-006; Ord. 020-1990-041)
- (4) PROBATION/DIVERSION FEE. The sum of \$30.00 for each month a defendant is on probation or diversion granted by the Municipal Court. (Ord. 020-2017-163)

## **CHAPTER X. POLICE**

- Article 1. Police Department
- Article 2. Property in Police Custody
- Article 3. Police Fees

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### **ARTICLE 1. POLICE DEPARTMENT**

- 10-101. POLICE DEPARTMENT. The law enforcement department shall consist of a chief of police and such number of regular law enforcement officers as shall be appointed as provided by K.S.A. 14-201. (Code 1990)
- 10-102. LAW ENFORCEMENT PERSONNEL; GENERAL DUTIES. It shall be the general duty of the chief of police and all sworn law enforcement personnel to the best of their ability to preserve good order, peace and quiet throughout the city as provided by law or ordinance.
- The chief of police and all sworn law enforcement personnel shall at all times have power to make arrest under proper process or without process on view of any offense against the laws of the State of Kansas or laws of the city and to keep all persons so arrested, unless admitted to bail, in the city jail, county jail or other proper place to prevent their escape until their trial can be had before the proper officer.
- All persons arrested for violation of any law of the state and who shall not be charged with an offense under any law of the city shall be released to the custody of the sheriff of the county and such arrest shall be reported to the county attorney. (Code 1990)
- 10-103. RULES AND REGULATIONS. 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. Such rules and regulations shall be approved by the governing body. (Code 1990)

## ARTICLE 2. PROPERTY IN POLICE CUSTODY

- 10-201. DISPOSITION. Any property which has been acquired or turned over to the police department and has been unclaimed or for which the proper owner cannot be ascertained for a period of 90 days shall be considered abandoned property and shall be sold at public auction to the highest bidder and the proceeds after expenses shall be paid to the city general fund. (Ord. 020-1985-035, Sec. 1,3; Code 1990)
- 10-202. SAME; EXEMPT PROPERTY. The following classes of property shall be considered exceptions to section 10-201 and shall be dealt with in the following manner:
- (a) Cash money shall be turned over to the city general fund unless it shall be determined to have collector's value, in which case it shall be auctioned according to the provisions in section 10-201.
  - (b) Firearms which are available for disposition may be dealt with in the following manner:
    - (1) If compatible with law enforcement usage, they may be turned over to the police department inventory.
    - (2) They may be sold to a firearms dealer who maintains the appropriate federal firearms license.
    - (3) They may be destroyed.
    - (4) 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., shall be destroyed.
  - (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 with a value in excess of \$500.00 may be sold after advertising said item in a general circulation newspaper on at least two occasions. Such sales shall be by closed bid.
  - (i) Any item necessary for conducting any investigation or prosecution by any law enforcement official or prosecutor until notice is received that the item is no longer necessary.
- (Ord. 020-1985-035, Sec. 1; Code 1990)
- 10-203. CLAIMING PROPERTY. The police department shall be required to make reasonable attempts to locate the owner of any property in storage. However, the responsibility for claiming and identifying any such property shall rest solely with the owner. (Code 1990)
- 10-204. 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 1990)



- 10-205. AUCTION. At such time as it has been determined that an auction is necessary to dispose of unclaimed property, an inventory listing all property to be disposed of shall be prepared and kept on file in the police department. Notice of an auction shall be published once in a general circulation newspaper at least three weeks prior to the date of the auction. The notice shall specify the date, time and place of the auction and shall also notify prospective buyers or potential claimants that a list of items to be auctioned is available at the police department and any claims on property must be made prior to the start of the auction. The city clerk may decline the highest bid and re-offer the property for sale if the city clerk considers the price bid to be too low. Any property not receiving bids shall be disposed of by private sale. (Ord. 020-1985-035, Sec. 2; Code 1990)
- 10-206. RECORDS. The city shall keep on file an itemized list of all items sold or disposed of and the amount realized thereof, if any. (Ord. 020-1985-035, Sec. 2)

### ARTICLE 3. POLICE FEES

- 10-301. FEE FOR POLICE RESPONSES TO PARTY. Definitions. As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
- Host: The person who owns or is in possession of the property where the party, gathering or event takes place, or the person in charge of the premises, or the person who organized the event. If the host is a minor, then the parents or guardians of that minor will be jointly and severally liable for the fee incurred for police services.
- Party, Gathering or Event: An event involving a group of persons who have assembled or are assembling for a social occasion or for a social activity.
- Police Services Fee: The cost to the city of any special security assignment, including, but not limited to, salaries of police officers while responding to or remaining at the party, gathering or event, the pro rata cost of equipment, the cost of repairing city equipment and property, the cost of any medical treatment of injured police officers, and the cost of reasonable attorney fees.
- Special Security Assignment: The assignment of police officers, services and equipment during a second or subsequent response to the party, gathering or event after the delivery of a written notice to the host that a fee may be imposed for costs incurred by the city for any subsequent police response.  
(Code 2007)
- 10-302. INITIAL POLICE RESPONSES TO PARTIES, GATHERINGS OR EVENTS.  
When any police officer responds to any party, gathering or event, and that police officer determines that there is a threat to the public peace, health, safety, or general welfare, the police officer shall issue a written notice to the host or hosts that a subsequent response to that same location or address within 24 hours of the first response shall be deemed a special security assignment rendered to provide security and order on behalf of the party, gathering or event and that the host may be liable for a police services fee as defined in this article. (Code 2007)
- 10-303. SUBSEQUENT POLICE RESPONSES TO PARTIES, GATHERINGS OR EVENTS; LIABILITY. If, after a written notice is issued pursuant to section 10-302, a subsequent police response or responses is necessary to the same location or address within 24 hours of the first response, such response or responses shall be deemed a special security assignment. Persons previously warned shall be jointly and severally liable for a police services fee as defined in this article.  
The amount of the fee shall be a debt owned to the city by the person or person warned, and if he or she is a minor, his or her parents or guardians shall be jointly and severally liable for the debt.  
(Code 2007)
- 10-304. COST; COLLECTION. The chief of police shall notify the city treasurer in writing of the performance of a special security assignment, of the name and address of the responsible person or persons, the date and time of the incident, the services performed, the costs and such other information as may be required. The city treasurer shall thereafter cause appropriate billings to be made. (Code 2007)

## CHAPTER XI. PUBLIC OFFENSES

Article 1. Uniform Offense Code

Article 2. Local Regulations

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### ARTICLE 1. UNIFORM OFFENSE CODE

11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference the Uniform Public Offense Code for Kansas Cities (40<sup>th</sup> Edition), as published by the League of Kansas Municipalities in 2024, revised, prepared and published by the League of Kansas Municipalities (the "UPOC"). No fewer than three copies of said uniform code shall be marked or stamped "Official Copy as adopted by the Code of the City Hesston", with any sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change shall be filed in the City Clerk's office and open for public inspection at all reasonable office hours. (Ord. 020-2024-186)

### ARTICLE 2. LOCAL REGULATIONS

11-201. AMENDING ARTICLES 9 AND 10 OF UNIFORM PUBLIC OFFENSE CODE.

(a) Section 10.6 of the Uniform Public Offense Code is hereby amended to read as follows:

**AIR GUN, AIR RIFLE, BOW AND ARROW, COMPOUND BOW, CROSSBOW, BLOWGUN, SLINGSHOT, BB GUN, OR PAINT BALL GUN.**

The unlawful operation of an air gun, air rifle, bow and arrow, compound bow, crossbow, blowgun, slingshot, bb gun, or paint ball gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, compound bow, crossbow, blowgun, slingshot, bb gun, or paint ball gun, within the city, except (i) within the confines of a building or other structure from which the projectiles cannot escape, or (ii) on City-owned property, with the prior approval of the City Council at locations when designated, and when supervised by persons greater than eighteen years of age.

Unlawful operation of and air gun, air rifle, bow and arrow, compound bow, crossbow, blowgun, slingshot, bb gun, or paint ball gun is a Class C violation.

(b) Subsection 9.9.1.(b) of the Uniform Public Offense Code is hereby amended to read as follows:

(b) Penalty. Violations of subsection (a) is a Class B violation for a first offense and a class A violation if the person has a prior conviction under K.S.A. 65-4162, prior to its repeal, under substantially similar offense from another jurisdiction, or under any city ordinance or county

resolution for a substantially similar offence; provided, that, it is a traffic violation punishable by a \$150 fine for the owner of a private motor vehicle, or a person who is the driver of the motor vehicle if the owner is not present, to possess on the person, or knowingly keep or allow to be kept within the vehicle Marijuana or cannabinoids, as defined and listed under K.S.A. 64-4105, in the amount of two ounces or less. (020-2022-180)

11-202. SUPPLEMENTING ARTICLE 9 OF UNIFORM PUBLIC OFFENSE CODE. Article 9 of the Uniform Public Offense Code is hereby supplemented by adding the following subsection:

Offenses Against Public Peace. 9.14 - Window Peeping. It shall be unlawful for any person to trespass upon the property owned or occupied by another in this city for the purpose of looking or peeping onto any window, door, skylight or other opening in a house, room or building or to loiter in a public street, alley, parking lot or other public place for the purpose of wrongfully observing the actions of occupants of any such house, room or building.

Window peeping is a Class C violation. (Ord. 020-2019-172)

11-203. SUPPLEMENTING ARTICLE 9 OF UNIFORM PUBLIC OFFENSE CODE. Article 9 of the Uniform Public Offense Code is hereby supplemented by adding the following subsection:

Offenses Against Public Peace. 9.15 - Curfew. (a) It shall be unlawful for any person under the age of 18 years to be upon the streets, avenues, alleys, parks, or other public places or in any place of public amusement or recreation during the period of time between 12:00 midnight and 5:00 a.m. on each day of the year.

(b) The provisions of subsection (a) shall not apply to any person under the age of 18 whose parent or legal guardian has renounced his or her right to the care, custody, and earnings of that person, or to any person under the age of 18 who is legally married.

(c) Curfew restrictions set out in (a) above shall not apply under the following circumstances:

(1) When the person under 18 years of age is accompanied by his or her parent or guardian.

(2) When the person under 18 years of age is attending a church or school function or other activity organized or sponsored by and under the supervision of a church or school or sponsored by parents or while returning home from any such function or activity by way of the most direct route.

(3) When the person under 18 years of age is going to or from a place

of lawful employment immediately preceding or subsequent to scheduled working hours or employment sanctioned errands by way of the most direct route.

(4) When the person under 18 years of age is engaged in normal travel through, to or from the city or to or from another destination outside the city.

(5) When the person under 18 years of age has in such person's possession a written statement, signed by their parent or guardian, dated within 24 hours prior to the date and time such person is stopped by law enforcement personnel, which written permission shall state the parent or guardian's knowledge of the child's legitimate activity and expected time of return to the residence of the parent or guardian.

(d) Any law enforcement officer finding a person under 18 years of age in violation of (a) above may stop such person and ascertain the name and address of the person and determine if such person is in violation of the curfew restrictions of this article. If any such person refuses to give his or her correct name or address, or is found to be in violation of the curfew restrictions of this article, such person shall be taken to the police station and held until a parent or legal guardian of such person, or some other adult having the care or custody of such person, can be contacted and can come take charge of such person.

(e) It shall be unlawful for any parent, guardian or other person lawfully entitled to the care, custody or control of a person under the age of 18 years to knowingly cause or permit such person to be in violation of this article.

(f) Any violation of the provisions of this article shall be punishable as and for a Class C violation under the Uniform Public Offense Code as adopted by the city. (Ord. 020-2019-172)

11-204.

**RAILROADS; BLOCKED CROSSINGS; SPEED.** (a) It shall be unlawful to permit any train to remain across any street crossing or sidewalk of the city so as to interfere with the passage of vehicles and pedestrians for a longer period of time than five minutes. In case it is necessary for such train to remain standing for a longer period, it shall be uncoupled at such crossing and the cars separated so that vehicles and pedestrians may pass.

(b) It shall be unlawful for any person to operate any train within the boundaries of the city at a speed greater than 20 miles per hour.

(c) Every person convicted of a violation of the provision of section 11-204 shall be punished for a first conviction thereof by a fine of not more than \$100.00. For a second conviction such person shall be punished by a fine of not more than \$250.00. For a third or subsequent conviction, such person shall be punished by a fine of not more than \$500.00. (Ord. 020-2019-172)



## CHAPTER XII. PUBLIC PROPERTY

- Article 1. City Parks
- Article 2. Hesston Cemetery
- Article 3. Public Library
- Article 4. Firearm Regulations
- Article 5. Land Bank
- Article 6. Brush Pit

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### ARTICLE 1. CITY PARKS

- 12-101. CITY LAWS EXTENDED TO PARK. The laws of the city shall extend to and cover all city parks. (Code 1990)
- 12-102. POLICE JURISDICTION OVER PARKS. The city shall have police regulations governing any public parks belonging to the city and the chief of police and law enforcement officers of the city shall have full power to enforce city laws governing city parks and shall maintain order therein. (Code 1990)
- 12-103. DAMAGING PARK PROPERTY. It shall be unlawful for any person, except duly authorized city employees, to willfully or wantonly remove, injure, tarnish, deface or destroy any building, walk, bench, tree or improvement or property of any kind belonging to any park owned by the city. (Code 1990)
- 12-104. DANGEROUS WEAPONS NOT ALLOWED. (a) Except as provided in subsection (b), it shall be unlawful for any person to carry or have in his or her possession any firearm or dangerous weapon or to shoot or discharge the same within the limits of any city parks.  
(b) The provisions of subsection (a) above shall not apply to duly authorized law enforcement officers in the performance of official duty.  
(Code 1990)
- 12-105. VEHICLE REGULATIONS. (a) Motor vehicles, including any vehicle licensed to operate on public streets, roads and highways and motorbikes, go-carts, snowmobiles and other motorized off-the-road vehicles shall be operated in a safe and prudent manner at all times in park areas.  
(b) Except as provided in subsection (d), it shall be unlawful for any person to park any motor vehicle in any area not designated for such purpose.  
(c) Except as provided in subsection (d), it shall be unlawful for any person to operate any motor vehicle within any city park except upon roads, drives and parking areas established by the city.  
(d) Subsections (b) and (c) above shall not apply to authorized city employees while engaged in the maintenance and care of the park.  
(e) It shall be unlawful to operate any such vehicle in any park area at a speed in excess of 20 m.p.h.  
(Code 1990)

- 12-106. HUNTING. It shall be unlawful for any person to pursue, catch, trap, maim, kill, shoot or take any wildlife, either bird or animal, in any manner at any time while in any city park. (Code 1990)
- 12-107. FIRES. It shall be unlawful for any person to build or kindle any fire in any city park except in the ovens, stoves, or grills provided for that purpose by the city, and such fire must be extinguished by the person, persons or parties starting such fire, immediately after use thereof. (Code 1990)
- 12-108. CAMPING PROHIBITED. Overnight camping is hereby prohibited in city parks except where posted. (Code 1990)
- 12-109. 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. (Code 1990)
- 12-110. PROHIBITION AGAINST ALCOHOLIC BEVERAGES AND CEREAL MALT BEVERAGES. 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. (Code 1990)
- 12-111. PRESERVATION OF NATURAL STATE. It shall be unlawful for any person, except duly authorized city employees, to take, injure, or disturb any live or dead tree, plant, shrub, or flower, or otherwise interfere with the natural state of city parks. (Code 1990)
- 12-112. GENERAL REGULATIONS. The city may post such rules and regulations, as are 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 constitute a violation of this code. (Code 1990)
- 12-113. CURFEW. It shall be unlawful for any person in be in a city park or parking lots during the period of time between 12:00 midnight and 5:00 a.m. on each day of the year.



## ARTICLE 2. HESSTON CEMETERY

- 12-201. CEMETERY ESTABLISHED. There is hereby established a city cemetery to be known as the "Hesston City Cemetery." (Ord. 120-1924-001; Code 1990)
- 12-202. SUPERVISION AND CONTROL; PARK SUPERVISOR. The general care and supervision of the grounds of the cemetery shall be under the charge and control of the park supervisor. (Ord. 120-1924-001; Code 1990)
- 12-203. SAME; DUTIES. The park supervisor shall have charge of the care, upkeep and maintenance of the city cemetery and all work in connection therewith. The park supervisor shall see that all regulations in connection with the enclosure of lots and grave spaces and adornment of the cemetery are observed. (Ord. 120-1924-001; Code 1990)
- 12-204. BURIAL PERMIT REQUIRED; REGISTRAR OF VITAL STATISTICS; PARK SUPERVISOR. No burial or entombment shall be made without a permit therefor issued by the city clerk as local registrar of vital statistics as provided by law. The park supervisor or other person in charge of the cemetery shall not inter or permit the interment of any dead body unless accompanied by a permit as required by law. (Ord. 120-1924-001; Code 1990)
- 12-205. SAME; DUPLICATE COPY. The city clerk shall maintain a duplicate copy of all burial permits issued. (Ord. 120-1924-001; Code 1990)
- 12-206. CONTENTS OF BURIAL PERMIT; PARK SUPERVISOR. No grave shall be opened or dug unless a burial permit has first been applied for by the owner of the lot or his or her duly authorized agent or representative or the funeral director or the person in charge of interment. The permit shall contain the following information over the signature of the person applying for the permit:
- (1) Name of lot owner or owners;
  - (2) Legal description of the lot and grave space in which burial is to be made;
  - (3) Name of person to be buried;
  - (4) Hour of burial;
  - (5) Name of funeral director (if such);
  - (6) Size and kind of box or vault;
  - (7) Signature of applicant for permit.
- (b) The city clerk shall, upon the approval of the applicant's statement and upon assurance of the payment of all fees and charges fixed for such burial permit and grave opening, issue a permit giving the above information permitting burial.
- (c) No grave shall be opened in any lot or space until the park supervisor shall have the permit herein required. All persons shall be liable to the city for any charges or fees required for opening any grave or making any interment when any work or interment preparations shall be commenced without a permit or without assurance of payment of the fees or charges required therefor.
- (d) The park supervisor, at the time of making a return of the burial permit to the city clerk shall, over his or her signature make a full statement of the work thereunder and the charges therefor and shall describe by measurements or drawing with measurements the exact location of the grave on the lot.

(Ord. 120-1924-001; Code 1990)

12-207.           OPENING CHARGES. (a) The charge for opening a grave, entombment or interment of cremations, which shall include the closing thereof, shall be established by the city clerk annually.

(b) The fees shall be increased by 50 percent if the closing of a grave, cremains interment or entombment occurs on Saturday or a legal holiday observed by the city. There shall be no Sunday closings.

(c) All fees collected for opening and closing graves, entombments and interments shall be credited to the general fund.

(Ord. 120-1924-001; Code 1990)

12-208.           LOCATION AND DEPTH OF GRAVES. (a) Each grave shall be opened by or under the supervision of the park supervisor and shall be located entirely upon one burial space as shown on the plat of the cemetery. Graves shall be not less than the following depths:

(1) For a child under 10 years of age - four and one-half feet;

(2) For an adult - six feet.

(b) No double burials will be allowed, that is, two burials in one grave, except when the bodies can be placed in one ordinary outside receptacle. Two urns containing cremated remains may be placed in a single lot provided that any additional headstone or marker is placed at ground level.

(Ord. 120-2005-002, Sec. 1; Code 2007)

12-209.           INTERMENT OF HUMAN BODIES ONLY; REGULATIONS. Only human bodies and the cremated remains of human bodies shall be interred in the cemetery. All bodies or cremated remains interred in the cemetery shall be enclosed in a metal, fiberglass, stone or cement burial vault or container.

(Ord. 120-1924-001; Code 1990)

12-210.           PERPETUAL CARE FUND. The perpetual care fund will be administered as provided by K.S.A. Supp. 17-1311 and K.S.A. Supp. 17-1312.

(Ord. 120-1924-001; Code 1990)

12-211.           REOPENING GRAVES; DISINTERMENT; APPLICATION; PERMITS. (a) Any person or persons desiring to reopen any grave in the cemetery to disinter or remove any body therefrom, or for any other purpose, shall first obtain a disinterment permit from the state department of health and environment, and second, a permit from the city clerk to be issued upon proper application and the payment of the opening charge required by section 12-207.

(b) The application shall give the number of the lot and block on which the grave is situated, the name of the person buried therein, the time of such burial and the place where such body is to be reburied, if it is to be reburied, and the reason therefor. The application shall be signed by a member of the family or when there is no family, by the next of kin desiring to reopen the grave and upon the approval thereof, a permit shall be issued. The permit shall contain the information disclosed in the application and shall be issued over the signature of the city clerk and under the seal of the city and shall authorize the reopening of the grave as described by the application.

(c) The park supervisor shall, upon receipt of the permit, reopen the grave and remove the body therefrom. Upon completion of the work, and the reinterment if there shall be one, he or she shall make a return of the permit to the city clerk.  
(Ord. 120-1924-001; Code 1990)

12-212. CEMETERY LOTS; CITY CLERK'S DUTIES. The city clerk shall keep a record of all sales of lots in the cemetery in a book containing a list of lots and blocks in the cemetery, the value of each lot or crypt space, the name of the purchaser, a description of the location of the lot and the date of purchase. He or she shall issue all certificates of purchase as provided in this article and not less than monthly, deposit all monies received with the city treasurer. The city clerk shall keep an accurate account of the funds in his or her charge.  
(Ord. 120-1924-001; Code 1990)

12-213. SAME; CONVEYANCES. Cemetery lots shall be conveyed by certificates signed by the mayor and countersigned by the city clerk under the seal of the city, specifying that the purchaser to whom the same is issued is the owner of the lot described therein, by number, as laid down upon on the map or plat, for the purpose of interment of human bodies; and the certificate shall vest in the purchasers, his or her heirs or assigns, a right in fee simple to the lot, for the sole purpose of interment of human bodies, under the regulations of the city; and the certificate shall be entitled to be recorded in the office of the register of deeds of the county without further acknowledgment; and such description of lots shall be deemed and recognized as a sufficient description thereof. (Ord. 120-1924-001; Code 1990)

12-214. SAME; LIMIT ON NUMBER; REPURCHASE BY CITY; TRANSFERS. No person shall own more than one cemetery lot at any one time. The city clerk shall have the authority to repurchase from any person holding a certificate of purchase, the unused portion of any cemetery lot, paying therefor an amount in proportion to the original sale price of the entire lot as the unused portion bears to the whole. No person owning a lot or part of a lot in the cemetery shall convey, transfer or devise the same to any other party or person without the written consent of the city first obtained, and any such conveyance or devices without such written consent shall be void and of no effect. (Ord. 120-1924-001; Code 1990)

12-216. PLANTING AND UPKEEP. (a) All plantings within the cemetery shall be under the supervision of the park supervisor.

(b) All persons wishing to plant trees, flowers, or shrubs must first secure the permission of the park supervisor. Plantings shall be of a type or variety and in such location as authorized by the park supervisor. The cemetery committee shall maintain a list of approved types or varieties of trees, flowers and shrubs which will be permitted to be planted on the cemetery.

(c) The park supervisor shall have the right to trim and/or remove all trees and shrubbery planted or to be planted in the cemetery.  
(Ord. 120-1924-001; Code 1990)

12-217. MONUMENTS AND MARKER; PERMIT REQUIRED. It shall be unlawful for any person, firm or corporation to place, construct or set any grave marker or monument, or the foundation therefor, in the cemetery without first having obtained a foundation permit therefor from the city clerk, and having such foundation approved by the park

supervisor before any monument or marker or other structure is placed thereon. The charge for such permit, which shall be paid for before being issued, shall be \$10.00 for any stone. (Ord. 120-1924-001; Code 1990)

12-218. SAME; FOUNDATIONS. All foundations for monuments and markers must be four inches longer and four inches wider than the base of the monument or marker and shall be constructed of concrete in the mixture of one part of Portland cement to four parts of good, clean, sharp river sand, thoroughly mixed in a mortar box of sufficient size to insure proper mixing. The concrete shall be poured in a pit not less than 36 inches in depth up to grade and made perfectly level on top. All foundation work shall be done when the ground is free from frost and not during freezing weather. (Ord. 120-1924-001; Code 1990)

12-219. SAME; SPECIFICATIONS. (a) All monuments and markers shall be set inside the lot line and true to the line, also level and plumb, and if not so placed, the park supervisor shall have power to have such stones and work changed so as to conform to this regulation, and the cost and expense thereof shall be charged to and collected from the person erecting the work.

(b) No headstones shall be more than one foot in height, unless such stone shall be at least six inches in thickness and only one marker shall be placed at any one grave. No other stone except granite or marble will be permitted for markers. (Ord. 120-1924-001; Code 1990)

12-220. SAME; PARK SUPERVISOR. All foundations, headstones and markers shall be set under the supervision of the park supervisor or his or her authorized representative. (Ord. 120-1924-001; Code 1990)

12-221. UNLOADING OF MONUMENTS; PROTECTION OF LOTS. All materials and monuments must be unloaded from the nearest street or alley and the lots properly planked and protected from all injury. All dirt and refuse of the job shall be immediately removed from the lot and the cemetery by the parties erecting any structure or memorial. (Ord. 120-1924-001; Code 1990)

12-222. WORK SUSPENDED DURING BURIAL SERVICES. Workers shall suspend labor if in the immediate vicinity of an interment until the conclusion of the service. (Ord. 120-1924-001; Code 1990)

12-223. ABOVE-GROUND MAUSOLEUMS AND VAULTS. (a) Above-ground mausoleums and vaults may be erected in the municipal cemetery if they are not higher than 48 inches aboveground level, have a width of not more than seven feet, a length of not more than nine feet and shall be erected not less than six feet on all sides from the edge of the lot upon which it is built. The materials used and construction of the same must conform to all laws of the State of Kansas governing the erection of mausoleums and vaults.

(b) Monument dealers or any person desiring to erect a mausoleum or vault above-ground must first submit to the city clerk specifications showing the size of the mausoleum or vault and the plan and materials to be used in construction the base upon which the mausoleum or vault is to be placed, together with the location of the same, and no work shall be done until the construction of the same is authorized in writing by the city clerk.

(c) Other above-ground mausoleums and vaults may be erected with the consent of the governing body.  
(Ord. 120-1924-001; Code 1990)

12-224. PUBLIC OFFENSES GENERALLY. All laws of the city relating to and defining public offenses in the city shall, insofar as the same shall be applicable, be in full force and effect in the cemetery. (Ord. 120-1924-001; Code 1990)

12-225. CEMETERY HOURS; UNLAWFUL ENTRANCE. (a) It shall be unlawful for any person or persons (other than duly authorized officers or employees of the city) to enter into or be upon the cemetery grounds of the city during the time between one hour after sunset and the hour of sunrise of any day, or for any person to enter or leave the grounds other than by the established and open entrances or gateways thereto.

(b) It shall be unlawful for any person to enter or be upon the cemetery grounds of the city when the gates or entrances thereto are closed, locked or blocked without first obtaining the permission of the park supervisor or his or her authorized representative in charge of the cemetery.  
(Ord. 120-1924-001; Code 1990)

12-226. FIREARMS; UNLAWFUL USE; EXCEPTIONS. It shall be unlawful for any person to discharge any firearms or fireworks or have the same in possession while in the cemetery. This section shall not apply to military personnel or members of veterans organizations or to authorized persons while participating in memorial services or military funerals nor to law enforcement officers.  
(Ord. 120-1924-001; Code 1990)

12-227. SPEED OF VEHICLES. It shall be unlawful for any person to drive any vehicle in the cemetery faster than 10 miles per hour. (Ord. 120-1924-001; Code 1990)

12-228. VEHICLES; OPERATION; PARKING. (a) It shall be unlawful to drive or move any vehicle within the cemetery except over a roadway open for vehicular traffic or to obstruct any path or driveway within the cemetery open to vehicular traffic. No person shall use the cemetery grounds or any driveway therein as a public thoroughfare nor drive any vehicle through the grounds except for purpose of making deliveries in connection with cemetery work or other lawful purpose.

(b) It shall be the duty of the park supervisor and his or her assistants to direct all vehicular traffic and the park supervisor is authorized to direct the parking or standing of all vehicles in the cemetery and it shall be unlawful for any person to disobey or disregard the directions of the park supervisor relating to the movement or standing of all vehicles within the cemetery.  
(Ord. 120-1924-001; Code 1990)

12-229. ANIMALS PROHIBITED. It shall be unlawful for any person to allow or permit any animal to run at-large within the cemetery. All persons entering the cemetery with dogs must keep the dogs on leash or confined to their automobile.  
(Ord. 120-1924-001; Code 1990)

12-230. RUBBISH; DEBRIS. It shall be unlawful for any person to dispose of any rubbish, trash or waste materials or debris of any kind in the city cemetery. It shall be

permissible to accumulate any refuse resulting from the doing of any authorized work in the cemetery but the same together with all derricks, tools, and materials shall be removed immediately upon completion of such work and the ground shall be left in as good a condition as possible. (Ord. 120-1924-001; Code 1990)

12-231.        **PROPERTY DAMAGE.** Subject to the rules and regulations therefor established by ordinance, it shall be unlawful for any person to remove, molest, injure, mar, deface, throw down or destroy any headstone, monuments, marker, tomb, vault, or mausoleum or decoration on any cemetery lot in the cemetery, or to open, disturb or molest any grave or place of burial therein.  
(Ord. 120-1924-001; Code 1990)

12-232.        **TREES; SHRUBS; FLOWERS.** It shall be unlawful for any unauthorized person to cut down, injure, break or destroy any trees, shrubs or other plants growing in the cemetery, or to pick, pluck or cut any flowers or decorative plants except as authorized by the cemetery rules. (Ord. 120-1924-001; Code 1990)

12-233.        **ENCLOSING LOTS, MOUNDING GRAVES PROHIBITED.** (a) Any fence, hedge, coping, curbing, or other means of enclosure of a lot is prohibited.  
                  (b) The permanent mounding of a grave more than four inches above the surrounding grade line is prohibited.  
(Ord. 120-1924-001; Code 1990)

### ARTICLE 3. PUBLIC LIBRARY

- 12-301. UNLAWFUL POSSESSION. It shall be unlawful for any person to fail to return any book, newspaper, magazine, pamphlet, manuscript, article, art print, phonograph, record, cassette tape, video tape, film or any other property owned by, or consigned to, the Hesston public library after written notice to return the same within 30 days has been given to such person, provided such notice shall be given after the expiration of the time, which by the rules of the library board, the book or other library material may be kept. (Ord. 160-1990-004, Sec. 1)
- 12-302. WRITTEN NOTICE. The notice required in section 12-301 shall be given by the librarian of the Hesston public library and shall be substantially presented as follows:
- (a) The notice shall be in writing;
  - (b) Specifically state the violation(s) alleged to exist or to have been committed;
  - (c) Specify that the person to whom the notice is issued shall have 30 days within which to correct the violations specified;
  - (d) Be addressed to and served upon the holder of the library card at the most recent address as it appears from such person's application for a library card or most recent address provided the librarian by the card holder. Such notice shall be deemed properly served upon such holder or owner of a library card if a copy thereof is served upon him or her personally, or if a copy thereof is sent by certified mail to the most recent address listed on his or her application for a library card.
- (Ord. 160-1990-004, Sec. 1)
- 12-303. PROSECUTION OF LIBRARY CARD HOLDER. In any prosecution charging a violation of section 12-301 of the code, proof that a particular individual was the registered holder of a particular library card which was used to secure any book or any other library property, shall constitute in evidence a prima facie presumption that the record owner or holder of such library card was the person who utilized the same to secure a certain book or other property of the Hesston public library at the point where and at the time when such violation is alleged to have occurred. The foregoing stated presumption shall apply only when the procedure as prescribed by section 12-302 above has been followed. (Ord. 160-1990-004, Sec. 1)
- 12-304. SAME; PENALTY. Any violation of the provisions of this article shall constitute a code violation and any person violating any of the provisions of this article shall upon conviction thereof be fined in a sum not less than \$50.00 nor in excess of \$500.00. (Ord. 160-1990-004, Sec. 1)

#### ARTICLE 4. FIREARM REGULATION

12-401. DEFINITION. As used in this article, the term “firearm” shall mean any handgun, pistol, or revolver. (Code 2007)

12-402. CARRY RESTRICTIONS. Pursuant to the Personal and Family Protection Act, Chapter 32 of the 2006 Session Laws of Kansas, as amended by Chapter 210 of the 2006 Session Laws of Kansas, it shall be unlawful to carry a concealed firearm into:

- (1) Any place where an activity declared a common nuisance by K.S.A. 22-3901, and amendments thereto, is maintained;
- (2) any police, sheriff or highway patrol station;
- (3) any detention facility, prison or jail;
- (4) any courthouse;
- (5) any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in the judge’s courtroom;
- (6) any polling place on the day an election is held;
- (7) any meeting of the governing body of a county, city or other political or taxing subdivision of the state, or any committee or subcommittee thereof;
- (8) on the state fairgrounds;
- (9) any state office building;
- (10) any athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of post-secondary education;
- (11) any professional athletic event not related to or involving firearms;
- (12) any portion of a drinking establishment as defined by K.S.A. 41-2601, and amendments thereto, except that this provision shall not apply to a restaurant as defined by K.S.A. 41-2601, and amendments thereto;
- (13) any elementary or secondary school building or structure used for student instruction or attendance, attendance center, administrative office, services center or other facility;
- (14) any community college, college or university facility;
- (15) any place where the carrying of firearms is prohibited by federal or state law;
- (16) any child exchange and visitation center provided for in K.S.A. 75-720, and amendments thereto;
- (17) any community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto; mental health clinic organized pursuant to K.S.A. 65-211 et seq., and amendments thereto; psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto; or state psychiatric hospital, as follows: Larned state hospital, Osawatomie state hospital or Rainbow mental health facility;
- (18) any city hall;
- (19) any public library operated by the state or by a political subdivision of the state;
- (20) any day care home or group day care home, as defined in Kansas administrative regulation 28-4-113, or any preschool or childcare center, as defined in Kansas administrative regulation 28-4-420; or
- (21) any church or temple; or
- (22) any place in violation of K.S.A. 21-4218, and amendments thereto.



(Code 2007)

12-403. PENALTY. Violation of Section 12-502 is a Class A violation. (Code 2007)

12-404. LOCATION; RESTRICTIONS. Pursuant to the authority granted to property owners and to the owners or operators of businesses under the Personal and Family Protection Act, Chapter 32 of the 2006 Session Laws of Kansas, as amended by Chapter 210 of the 2006 Session Laws of Kansas, the governing body of the City of Madison, Kansas, hereby prohibits the carrying of any concealed firearm by any person other than those identified in Section 4 below while in or upon the premises of any of the following properties which are owned by the City of Madison, Kansas, and/or on which the City is operating as a public employer:

- (1) The Hesston Fire and EMS Station at 115 East Smith, Hesston, Kansas;
  - (2) The Hesston Wastewater Treatment Plant located at 7119 North Hesston Road, Hesston, Kansas;
  - (3) The Hesston City Shop located at 505 West Lincoln Blvd., Hesston, Kansas;
  - (5) Any city park or playground within the City of Hesston, Kansas.
- (Code 2007)

12-405. SAME; PENALTY. Violation of section 12-504 is a Class B violation.  
(Code 2007)

12-406. EXCEPTIONS. (a) The prohibitions set for in Sections 12-502 and 12-504 above shall apply both to the interiors of the structures on all such properties and to the exterior areas; provided, however, that the prohibitions shall not apply to persons who are otherwise lawfully in possession of any such firearm while in a motor vehicle which is located in an area designated for public vehicular traffic or for public vehicular parking.

(b) The prohibitions set forth in Sections 12-502 and 12-504 above shall not apply to any person identified under the exclusions set forth in subsections (b) or (c) of K.S.A. 21-4201 regarding the criminal use of weapons, as said provisions now apply or may hereafter be amended.  
(Code 2007)

## ARTICLE 5. LAND BANK

**12-501. Establishment; Purpose.** There is hereby established a Land Bank of the City pursuant to K.S.A. 12-5901 *et seq.* (the "Act"). The Land Bank will be a quasi-governmental entity with all statutory authority, but with the primary responsibility and authority for maintaining and selling real property located within the City to help achieve the City's goal of returning municipally-owned property to private ownership, cost effectively maintaining said property, ensuring conformance with the goals of the City's Comprehensive Plan, and the encouragement of economic development. The Land Bank is intended to assist in the elimination of barriers to returning properties to private ownership and productive use, and to help facilitate the strategic conveyance of property.

**12-502. Definitions.** As used in this Article:

- A. "Act" means K.S.A. 12-5901 *et seq.*, as amended from time to time.
- B. "Board of Trustees" means the Board of Trustees of the Land Bank.
- C. "City" means the City of Hesston, Kansas, unless otherwise specifically stated.
- D. "Land Bank" means the Land Bank of the City.
- E. "Governing Body" means the Governing Body of the City.

**12-503. Board of Trustees; Appointment, Terms and Dissolution.**

A. There is hereby established a Land Bank Board of Trustees. The Board of Trustees shall be composed of the entire membership of the Governing Body of the City, *ex officio*, who shall be the voting members, and one additional member appointed by the Mayor who shall be a non-voting member and who shall be a City staff member.

B. The term of office of each voting member of the Board of Trustees shall be coterminous with that member's term of office on the Governing Body of the City. The non-voting member of the Board of Trustees shall serve at the pleasure of the Mayor.

C. The Land Bank may be dissolved by ordinance of the Governing Body of the City. In such case, all property of the Land Bank shall be transferred to and held by the City and may be disposed of as otherwise provided by law.

**12-504. Board of Trustees; Organization.**

A. The Board of Trustee's officers shall consist of: 1) a chairperson who shall be the Mayor, 2) a vice-chairperson who shall be the President of the Council, and 3) a secretary/treasurer who shall be the non-voting appointee. Each officer shall be appointed annually, but may serve in such office for less than one year as the term of office of the chairman and vice-chairperson shall be coterminous with that member's term as Mayor or President of the Council of the Governing Body of the City. The secretary/treasurer shall be removed from membership of the Land Bank if no longer serving as a member of City Staff. The secretary/treasurer shall be bonded in such amounts as the Governing Body may require.

B. The Board of Trustees may appoint such officers, agents and employees as it may require for the performance of its duties, and shall determine the qualifications and duties and fix the compensation of such officers, agents and employees.

C. The Board of Trustees shall fix the time and place at which its meetings shall be held and, in the absence of such designation, meetings shall be held as a component part of lawful meetings of the Governing Body of the City. Meetings shall be held within the City and shall be subject to the Kansas Open Meeting Act, K.S.A. 75-4317 *et seq.*, and amendments thereto.

D. A majority of the Board of Trustees shall constitute a quorum for the transaction of business. No action of the Board of Trustees shall be binding unless taken at a meeting at which at least a quorum is present.

E. The members of the Board of Trustees shall be subject to the provisions of the laws of the State of Kansas which relate to conflicts of interest of county officers and employees, including, but not limited to, K.S.A.75-4301 *et seq.*, and amendments thereto.

F. Subject to the provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, and amendments thereto, if any action at law or equity, or other legal proceeding, shall be brought against any member of the Board of Trustees or any act or omission arising out of the performance of duties as a member of the Board of Trustees, such member shall be indemnified in whole and held harmless by the Board of Trustees for any judgment or decree entered against such member and, further, shall be defended at the cost and expense of the Land Bank in any such proceeding.

**12-505. Land Bank Board of Trustees Powers and Duties.**

A. The Board of Trustees may:

1. Sue and be sued.
2. Enter into contracts.
3. Appoint and remove staff and provide for the compensation thereof.

4. Acquire, by purchase, gift or devise, and convey any real property, including easements and reversionary interests, and any personal property, subject to the provisions of this Article and the Act. Any property acquired by the City, Harvey County, Kansas (the "County") or any other city or taxing subdivision within the County may be transferred to the Land Bank. The Board may accept or refuse to accept any property. The transfer of any property pursuant to this Article shall not be subject to any bidding requirements and shall be exempt from any provisions of law requiring a public sale.

5. Rebate all, or any portion thereof, the taxes on any property sold or conveyed by the Land Bank.

B. The fee simple title to any real estate which is sold to the County in accordance with the provisions of K.S.A. 79-2803 and 79-2804, and amendments thereto, and upon acceptance by the Board of Trustees may be transferred to the Land Bank by a good and sufficient deed by the County Clerk upon a written order from the Board of County Commissioners.

C. The Board of Trustees shall assume possession and control of any property acquired by it and shall hold and administer such property. In the administration of property, the Board of Trustees shall:

- I. Manage, maintain and protect or temporarily use for a public

purpose such property in the manner the Board of Trustees deems appropriate;

2. Compile and maintain a written inventory of all such property. The inventory shall be available for public inspection all times;

3. Study, analyze and evaluate potential, present and future uses for such property which would provide for the effective property;

4. Plan for and use the Board of Trustee's best efforts to consummate the sale or other disposition of such property at such times and upon such terms and conditions deemed appropriate;

5. Establish and maintain records and accounts reflecting all transactions, expenditures and revenues in relation to the Land Bank's activities, including separate itemizations of all transactions, expenditures and revenues concerning each individual parcel of property acquired; and

6. Thirty days prior to the sale of any property owned by the Land Bank, publish a notice in the official City newspaper announcing such sale.

D. To exercise any other power which may be authorized or delegated to the Land Bank by the Act, the Governing Body, by Ordinance, Resolution, or regular motion.

E. To exercise any other incidental power which is necessary to carry out the purposes of the Land Bank, this Article and the Act.

F. The Board of Trustees may, in its discretion, establish separate neighborhood or City advisory committees consisting of persons living or owning property within the City, the County or the neighborhood, and determine the boundaries of each neighborhood committee. In the absence of a Resolution by the Board of Trustees providing otherwise, any such advisory committee shall consist of not less than five and no more than nine persons, to be appointed by the Board of Trustees for two-year overlapping terms. The Board of Trustees shall consult with each advisory committee as needed to review the operations and activities of the Land Bank and to receive the advice of the members of the advisory committee concerning any matter which comes before the committee.

**12-506. Land Bank; Operational Requirements.**

The Land Bank shall be subject to the following requirements:

A. The Land Bank shall be subject to the provisions of the Cash Basis Law, K.S.A.10-1101 et seq., and amendments thereto.

B. The budget of the Land Bank shall be prepared, adopted and published as provided by law for other political subdivisions of the State of Kansas. No budget shall be adopted by the Board until it has been submitted to, reviewed and approved by the Governing Body. If the Governing Body elects not to ratify the budget, it must reject the plan in its entirety and remand it back to the Board with specific recommendations for reconsideration.

C. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Board. Such report may be prepared as a component unit of the City's audit report.

D. All records and accounts shall be subject to public inspection pursuant to K.S.A. 45-216 *et seq.*, and amendments thereto.

E. Any moneys of the Land Bank which are not immediately required for the purposes of the Land Bank shall be invested in the manner prescribed by K.S.A. 12-1675, and amendments thereto.

F. The Land Bank shall make an annual report to the Governing Body on or before January 31 of each year (commencing January 31, 2018), showing receipts and disbursements from all funds under its control and showing all property transactions occurring in each year. Such report shall include an inventory of all property held by the Land Bank. A copy of such inventory shall also be published by the secretary/treasurer in the official City newspaper on or before January 31 of each year.

G. The Land Bank shall be subject to the statutory requirements for the deposit of public money as provided in K.S.A. 9-1401 *et seq.*, and amendments thereto.

H. The Board of Trustees, without competitive bidding, may sell any property acquired by the Board of Trustees at such times, to such persons, and upon such terms and conditions, and subject to such restrictions and covenants deemed necessary or appropriate to assure the property's effective utilization.

I. The sale of any real property by the Board of Trustees, under the provisions of this Article or the Act, on which there are delinquent special assessments to finance public improvements shall be conditioned upon the approval of the municipality which levied such special assessments.

J. The Board of Trustees, for the purpose of land disposition, may consolidate, assemble or subdivide individual parcels of property acquired by the Land Bank.

K. Until sold or otherwise disposed of by the Land Bank, and except for special assessments levied by a municipality to finance public improvements, any property acquired by the Land Bank shall be exempt from the payment of ad valorem taxes levied by the State of Kansas and any other political or taxing subdivision of the state.

L. Except for special assessments levied by a municipality to finance public improvements, when the Board of Trustees acquires property pursuant to this Article and the Act, the Harvey County Treasurer shall be notified by the Board of Trustees to remove from the tax rolls all taxes, assessments, charges, penalties and interest that are due and payable on the property at the time of acquisition by the Board of Trustees.

M. Property held by the Land Bank shall remain liable for special assessments levied by a municipality for public improvements, but no payment thereof shall be required

until such property is sold or otherwise conveyed by the Land Bank. The Land Bank and the City may enter into any such agreements regarding collection of special assessments which are lawful.

N. The Governing Body may abate part or all of any special assessments which it has levied on property acquired by the Land Bank, and the Land Bank and the Governing Body may enter into agreements related thereto. Any special assessments that are abated shall be removed from the tax rolls by the Harvey County Treasurer as of the effective date of the abatement.

O. Any municipality which has levied special assessments on property acquired by the Land Bank may enter into an agreement with the Land Bank to defer or reamortize part or all of the special assessments. The governing body of such municipality shall provide for such deferral or reamortization by passage of an ordinance. Any special assessments that are deferred or reamortized shall be corrected on the tax rolls by the county treasurer as of the effective date of the ordinance or resolution providing for such deferral or reamortization.

P. Any moneys derived from the sale of property by the Land Bank shall be retained by the Land Bank for the purposes and operations thereof; provided, however, that the Board of Trustees may use all or part of the proceeds from such sale to reimburse the City for delinquent special assessments due on such property, or to pay off any debt associated with the acquisition of the property by either the City or the Land Bank.

## ARTICLE 6. BRUSH PIT

12-601. CITY LAWS EXTEND TO BRUSH PIT. The laws of the City shall extend to and be in full force and effect upon the property containing the City's brush pit.

12-602. REGULATION; POLICE JURISDICTION. The City may establish rules and regulations from time to time governing the use of the brush pit and the chief of police and law enforcement officers of the City shall have full power to enforce all laws, rules, and regulations governing the brush pit and shall maintain order therein.

12-603. USES AND PROHIBITIONS.

- (a) Hours. The City may from time to time establish hours of operation of the brush pit. Except for authorized City staff performing City functions, it shall be unlawful for any person may be present at the brush pit or deposit any materials at the brush pit at any time outside such hours of operation.
- (b) City Residents Only. Access to and use of the City's brush pit is limited exclusively to City staff, residents of the City, and contractors hired by the City or a City resident. Except as otherwise required by law, it shall be unlawful for any other person to be present at the brush pit or deposit any materials at the brush pit at any time.

- (c) Allowed Materials. The brush pit is solely for the deposit of trees and brush generated from land clearing activities and grasses or other agricultural waste. It shall be unlawful to deposit any residential, commercial, institutional, or industrial solid waste, or any other materials prohibited by Federal, State, or local rules and regulations, at the brush pit.

12-604.

**VIOLATIONS AND PENALTIES.** Violation of any of the provisions of this Article shall be punishable as set forth in Section 1-116 of the Code, provided the fine for a first violation shall be \$100 for individuals and \$250 for commercial violators (persons being paid to dispose) and, in addition to any such penalty, any person violating any provision of this Article may be immediately ordered, directed, or forcibly removed from the City's property.

## CHAPTER XIII. STREETS AND SIDEWALKS

- Article 1. Sidewalks
- Article 2. Streets
- Article 3. Trees and Shrubs
- Article 4. Snow and Ice

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### ARTICLE 1. SIDEWALKS

- 13-101. PERMIT REQUIRED. It shall be unlawful to construct, reconstruct or repair any sidewalk within the city until the plans first have been approved by the building inspector and a permit issued for such work by the city clerk. (Code 2007)
- 13-102. SIDEWALK GRADE. Hereafter all sidewalks constructed or reconstructed in the city shall be construed on the established grade. When the governing body shall order a sidewalk constructed as hereafter provided, the city shall pay the cost of bringing the street to grade for the sidewalk. Where no grade has been established, the owner of abutting property may construct a sidewalk on the natural grade. If the grade has been established, the city clerk shall furnish the property owner with the official grade by reference to a stated distance above or below the street grade. (K.S.A. 12-1801, 12-1807; Code 1990)
- 13-103. SAME; SPECIFICATIONS. Hereafter all sidewalks shall be of single-course construction and shall be constructed and laid in accordance with standard plans and specifications hereby adopted by reference and filed in the office of the city clerk as provided by K.S.A. 12-1802. It shall be unlawful for any person, firm or corporation to construct, reconstruct or repair any sidewalk except as provided by this article. (Code 1990)
- 13-104. SAME; PETITION. When a petition signed by no fewer than 10 citizens owning real estate in the city requesting construction of a sidewalk is filed with the city clerk, the governing body may in its discretion, by a resolution, order such sidewalk constructed as herein provided. (K.S.A. 12-1803; Code 1990)
- 13-105. SAME; CONDEMNATION, RECONSTRUCTION. When any sidewalk, in the opinion of the governing body, become 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. (K.S.A. 12-1804; Code 1990)
- 13-106. 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. (K.S.A. 12-1805; Code 1990)

- 13-107.       **RIGHT OF ABUTTING OWNER.** Nothing in this article shall be construed 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. (K.S.A. 12-1806; Code 1990)
- 13-108.       **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 his or her 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. (K.S.A. 12-1808; Code 1990)
- 13-109.       **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 13-106 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 \$1,000 entered into by the city for any such purpose a statutory lien bond required by K.S.A. 60-1111 shall be furnished.  
(Code 1990)
- 13-110.       **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 show cases, 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. (Code 1990)
- 13-111.       **SAME; EXCEPTION.** The governing body 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 of 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 governing body. (Code 1990)

## ARTICLE 2. STREETS

- 13-201. EXCAVATION PERMIT. No person, other than authorized city employees, shall dig or excavate any hole, ditch, trench or tunnel in or under any street, alley, sidewalk, park or other public property or public easement through private property without first having secured a permit for such excavation. Application shall be made to the city clerk. (Code 1990)
- 13-202. SAME; BOND. (a) No permit authorized in this article shall be issued until the applicant has given to the city a good and sufficient bond in the sum of \$5,000 conditioned that the applicant will faithfully comply with all the terms and conditions of this article, and will indemnify and hold the city harmless against all costs, expenses, damages and injuries by persons or by the city sustained by reason of the carelessness or negligence of the permit holder. No bond for this purpose shall run for longer than two years without being renewed. The bond shall remain in full force and effect as to each excavation for two years after the same has been made or completed.
- (b) Any utility operating under a franchise or a contractor under contract with the city for municipal improvement shall not be required to give bond as provided in subsection (a).
- (c) Each bond given under this section shall be approved by the city attorney and filed with the city clerk.  
(Code 1990)
- 13-203. SAME; FILED. If the application is approved by the city, the city clerk shall issue a permit upon payment of a fee of \$25.00. Each permit issued under the provisions of this section shall cover only one specified excavation. (Code 1990)
- 13-204. SAME; BARRICADES. Any person to whom an excavation permit is issued shall enclose all excavations which they make with sufficient barricades and danger signs at all times, and shall maintain sufficient warning lights or flares at nighttime. The holder of an excavation permit shall take all necessary precautions to guard the public against all accidents from the beginning of the work to the completion of the same. (Code 1990)
- 13-205. SAME; UNLAWFUL ACTS. It shall be unlawful for any person, except those having authority from the city or any officer thereof to throw down, interfere with or remove any barriers, barricades, or lights placed in any street to guard and ward the traveling public of any construction work thereon or adjacent thereto. (Code 1990)
- 13-206. CUTTING CURBS; PAVEMENT. (a) No person shall cut any curb, gutter, pavement, blacktop, sidewalk or excavate any street, alley or other public grounds of the city for any purpose without first obtaining a permit authorizing the same from the city clerk.
- (b) Once the work for which the excavation was made has been completed the city shall restore the pavement, blacktop, sidewalk or other surfacing at the expense of the person from whom the excavation was made.

(c) In lieu of the city replacing pavement, it may elect to authorize utility companies or contractors to resurface streets or sidewalks with like materials, subject to approval of the street superintendent.  
(Code 1990)

13-207. 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 street superintendent. (Code 2003)

13-208. 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 1990)

13-209. USING STREETS. (a) No person shall occupy any portion of any street, alley or sidewalk for the purpose of temporarily storing building materials without first obtaining a permit for such temporary use from the city administrator.

(b) No person may use any portion of any sidewalk or street 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 city governing body from temporarily waiving the prohibition of this subsection in connection with community promotions or community-wide celebrations when such waiver is considered to be in the best interest of the city.  
(Code 1990)

13-210. DANGEROUS OBJECTS IN. It shall be unlawful for any person to place, throw or cause to be placed or thrown in or on any street, alley, sidewalk 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. (Code 1990)

13-211. PETROLEUM PRODUCTS IN STREETS. It shall be unlawful for any person, firm or corporation to deposit or throw any waste oil, fuel oil, kerosene, gasoline or other products of petroleum or any acids into or upon any street or 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 any street, alley, or sidewalk within the city.  
(Code 1990)

13-212. DISCHARGING WATER ON STREETS. It shall be unlawful for any person, firm or corporation to throw or discharge water into any ditch, street, avenue or alley in the city or to cause any water to stand or form pools or to flow in a stream thereon. This section shall not apply to persons cleaning or flushing such streets, avenues or alleys under the authority of the governing body, nor to members of the fire department. (Code 1990)

13-213. 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. (Code 1990)

13-214.           THROWING IN STREETS. It shall be unlawful to throw or bat any ball, stone, or other hard substance into, on or across any street or alley or at or against any building or vehicle. (Code 1990)

13-215.           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 so constructed or maintained as to prevent the splashing or spilling of any of the substances therein contained upon the streets or alleys. (Code 1990)

### ARTICLE 3. TREES AND SHRUBS

- 13-301. DEFINITIONS. (a) Street trees - shall include all trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the city.
- (b) Park trees - shall include all trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park area.
- (c) Large trees - shall mean those trees attaining a mature height of 45 feet or more.
- (d) Medium trees - shall mean those trees attaining a mature height between 30 to 45 feet.
- (e) Small trees - shall mean those trees attaining a normal mature height of 30 feet or less.
- (Ord. 170-1985-006, Sec. 1)
- 13-302. CITY TREE BOARD; CREATED. There is hereby created and established a city tree board for the city which shall consist of not less than five nor more than seven members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the governing body. (Ord. 170-1985-006, Sec. 2)
- 13-303. SAME; TERM OF OFFICE. The term of office of the members of the city tree board shall be three years except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term. (Ord. 170-1985-006, Sec. 3)
- 13-304. SAME; COMPENSATION. Members of the board shall serve without compensation. (Ord. 170-1985-006, Sec. 4)
- 13-305. SAME; DUTIES AND RESPONSIBILITIES. (a) It shall be the responsibility of the board to study, investigate, counsel and develop a written plan to provide a guide for the proper development and maintenance of the tree environment of the city, including the care, preservation, trimming, planting, removal or disposition of trees and shrubs in public ways, streets and alleys. Upon completion of any such plan it shall be presented to the governing body for approval. Thereafter, the board shall review and update the plan as necessary and submit all updates to the governing body for approval.
- (b) It shall be the duty of the tree board to promote the education and awareness of the citizens of the city in the area of tree lore. The board, at its discretion, shall work independently and/or with whatever educational organizations it deems appropriate for the purpose of assisting the dissemination of information on tree planting, tree problems, tree care and maintenance, and its long range plans and vision for the local city forest.
- (c) The tree board shall be available for consultation to any private citizen of the city with regard to any aspect that might affect the city forest. In addition, the tree board shall seek to promote the planting, care, and maintenance of trees on

the property of private citizens in such a way that enhances the long range beauty, stability, and utility of the city forest.

(d) In all of its activities and duties the tree board shall endeavor to cooperate and consult with other organizations within the city which may at times have an interest in matters pertaining to the city forest. This includes, but shall not be limited to, The Dyck Arboretum of the Plains, Schowalter Villa, Hesston College, USD 460, and private businesses.

(e) The governing body, at its discretion, may refer any matter which it deems appropriate to the board for the board's consideration, investigation, inspection, findings, reports or recommendations.

(Ord. 170-1985-006, Sec. 5; Code 1990)

13-306. SAME; OPERATION. At the first meeting annually in April, the board shall meet and select such officers as it deems appropriate, and make rules and regulations regarding the operation of the board. The board shall keep a record of its proceedings and provide a copy, upon request, but at least annually, to the governing body. A majority of the members shall be a quorum for the transaction of business. (Ord. 170-1985-006, Sec. 6; Code 1990)

13-307. STREET TREE SPECIES; LIST DESIGNATING SAME. A list which constitutes the official street tree species for the city shall be compiled by the board and updated as needed. The board shall prepare at least three copies of the list or updated list and file no less than two copies with the city clerk. Any such list filed with the city clerk shall be available to the public for their use and inspection. No species other than those included in such official list may be planted as street trees without prior written approval of the board. (Ord. 170-1985-006, Sec. 7; Code 1990)

13-308. SAME; PLACEMENT. (a) Street trees shall be planted no closer together than the following: Small trees, 30 feet; medium trees, 40 feet; large trees, 50 feet.

(b) No street trees shall be planted within 20 feet of any street corner, measured from the point of the nearest intersecting curb or curblin. No street tree shall be planted within 10 feet of any fire hydrant.

(c) No street trees other than those species listed as small trees in the current street tree list may be planted under or within 10 lateral feet of any overhead utility wire or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility line. It shall be the responsibility of the landowner or person planting such trees to ascertain the location of underground utilities or other obstructions.

(Ord. 170-1985-006, Sec. 8:10; Code 1990)

13-309. TREE TOPPING. It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as a severe cutting back of limbs to stubs larger than three inches in diameter within the trees crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the determination and discretion of the board. (Ord. 170-1985-006, Sec. 13)

- 13-310. PUBLIC TREE CARE. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety when servicing city utilities or to preserve the symmetry and beauty of such public grounds. The board 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 sewers, electric power lines, gas lines, water lines, or other public improvements, whether overhead or underground, or is affected with any injurious fungus, insect or other pest. (Ord. 170-1985-006, Sec. 12)
- 13-311. PRUNING; CORNER CLEARANCE. Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of nine feet above the surface of any sidewalk or driveway and there shall be a clear space of 15 feet above the crown of any street or alley. The owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with the visibility of any traffic control device or sign. (Ord. 070-1985-006, Sec. 14)
- 13-312. DEAD OR DISEASED TREE CONTROL ON PRIVATE PROPERTY. 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 tree board will notify in writing the owners of such trees. Removal shall be done by the owners at his or her own expense within 60 days after the date of service of notice. In the event of failure of the owner to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owners property tax notice. (Ord. 170-1985-006, Sec. 15)
- 13-313. INTERFERENCE WITH CITY TREE BOARD. It shall be unlawful for any person to prevent, delay or interfere with the city tree board or any of its agents, or servants, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees or trees on private grounds, as authorized in this article. (Ord. 170-1985-006, Sec. 16)
- 13-314. ARBORISTS LICENSE; INSURANCE. It shall be unlawful for any person or firm to engage in the business or occupation of trimming, pruning, treating or removing street or park trees within the city without first applying for and procuring a license. The license fee shall be \$25.00 annually in advance. No license shall be required for any public service company or any city employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$300,000 for public liability including bodily injury and \$100,000 for property damage, indemnifying the city or any person injured or

damaged resulting from the pursuit of such endeavors as herein described. (Ord. 170-1987-007)

- 13-315. REVIEW BY GOVERNING BODY. The governing body shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the city tree board to the governing body who may hear the matter and make final decision. (Ord. 170-1985-006, Sec. 18)

#### **ARTICLE 4. SNOW AND ICE**

- 13-401. SNOW AND ICE TO BE REMOVED. (a) It shall be unlawful for the owner and/or the occupant of any lots abutting upon any sidewalks to fail to cause to be removed from such sidewalks all snow and ice within 12 hours from the time that the snow fall or ice storm ceases. If the snow falls or ice accumulates upon the sidewalks in the nighttime, removal of same must be made within 12 hours after sunrise on the following day.

(b) It shall be unlawful for any person to place snow removed from private property upon any public street, alley or sidewalk.  
(Code 1990)

- 13-402. SAME: EXCEPTION; ALTERNATE REMEDY. Where there shall be ice or compacted snow on any such sidewalk of such a character as to make it practically impossible to remove the same, the sprinkling of ashes, sand or other noncorrosive chemicals on the accumulation of ice or snow in such a manner as to make such sidewalk reasonably safe for pedestrian travel shall be deemed a sufficient compliance with the provisions of this article until the ice or snow can be removed.  
(Code 1990)

- 13-403. SAME; PENALTY. That any person violating the provisions of section 13-401 shall, upon conviction, be fined \$25.00. (Code 1990)

- 13-404. REMOVAL MAY BE MADE BY CITY. If any owner or occupant of any lot or lots shall refuse or neglect to clean or remove from the sidewalk abutting the lot or lots all snow and ice within the time specified, the city may cause such snow and ice to be removed from sidewalks and the cost thereof shall be assessed against such abutting lot or lots, and the city clerk shall certify the same to the county clerk for collection as provided by law. (Code 1990)

- 13-405. COSTS ON TAX ROLLS. The city clerk shall, at the time of certifying other city taxes to the county clerk, certify the unpaid costs for removal of snow or ice performed under the authority of section 13-404 and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground. The cost of such work shall be paid from the general fund or other proper fund of the city, and such fund shall be reimbursed when payments therefor are received or when such assessments are collected and received by the city. (Code 1990)

- 13-406. SNOW EMERGENCY. It shall be unlawful for any person to park, abandon or leave unattended any vehicle on any public street, alley, or city owned off-street parking area during any snow emergency proclaimed by the mayor, unless the



snow has been removed or plowed from the street, alley, or parking area and the snow has ceased to fall. A snow emergency parking ban shall continue from its proclamation through the duration of the snow or ice storm and the 48-hour period after cessation of such storm, except as provided in this section upon street which have been fully opened.

Such a ban shall have uniform application and the chief of police is directed to widely publicize the requirements, using all available news media in early November each year.

(Ord. 010-1980-036, Sec. 1)

13-407.

SAME; PROCLAMATION. When predictions or occurrences indicate the need, the mayor shall proclaim a snow emergency and the chief of police shall inform the news media to publicize the proclamation and the parking rules thereunder. Such emergency may be extended or shortened when conditions warrant. The proclamation shall read as follows:

"The Mayor of the City of Hesston, Kansas, has placed the snow emergency plan into effect.

Under the provisions of this ordinance, vehicles parked on city streets after the declaration of a snow emergency will receive a citation for illegal parking.

The Governing Body requests the cooperation of everyone in keeping vehicles off the streets so that the job of snow removal can be accomplished as quickly as possible."

(Ord. 010-1980-036, Secs. 1:2)

## CHAPTER XIV. TRAFFIC

- Article 1. Standard Traffic Ordinance
- Article 2. Local Traffic Regulations
- Article 3. Abandoned Motor Vehicles on Public Property
- Article 4. Hazardous Materials
- Article 5. Operation of Golf Vehicles within the City

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### ARTICLE 1. STANDARD TRAFFIC ORDINANCE

- 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 Hesston, Kansas, that certain standard traffic ordinance known as the Standard Traffic Ordinance for Kansas Cities (51<sup>st</sup> Edition) prepared and published in book form by the League of Kansas Municipalities in 2024, save and except such article, 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 (3) copies of the STO shall be marked or stamped "Official Copy as adopted by Ordinance No. 020-2024-187" 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 section and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. (Ord. 020-2024-187)
- 14-102. SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES. (a) An ordinance traffic infraction is a violation of any section of this article 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 violations which are included within this article, and which are not ordinance traffic infractions as defined in subsection (a) of this section, shall be considered traffic offenses.  
(Ord. 020-1989-047, Sec. 2)
- 14-103. SAME; PENALTY FOR SCHEDULED FINES. 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 \$10.00 nor more than \$500.00. 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 \$500.00. (Code 1991)
- 14-104. SAME; AMENDMENT. Section 51 of the Standard Traffic Ordinance is hereby amended to read as follows:  
The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction or to enter a parking space on the side of the street opposite that in which he or she is traveling on any street which shall be marked with a double yellow line.  
(Ord. 020-1978-020)

## ARTICLE 2. LOCAL TRAFFIC REGULATIONS

14-201. TRAFFIC CONTROL DEVICES AND MARKINGS. The Standard Traffic Ordinance as adopted is hereby modified by adding thereto the following:

The governing body may, by resolution, establish and fix the location of such traffic control devices as may be deemed necessary to guide and warn traffic under the provisions of this chapter, other traffic ordinances and the state laws. The city shall place and maintain such traffic control signs, signals and devices when and as may be required by the authority of the governing body to make effective the provisions of this chapter and other ordinances for the regulation of traffic. Any official traffic control device placed pursuant to this section shall be marked and labeled on a map of the City of Hesston for the purpose of displaying all such traffic control devices and shall be filed with the city clerk to be open to inspection and available to the public at all reasonable hours of business.  
(Code 1990)

14-202. RANDALL STREET SPEED LIMIT. (a) The legal speed zone on Randall Street from the south line of Lincoln Boulevard to the east line of Ridge Road is hereby set at 35 m.p.h.

(b) It shall be unlawful for any motor vehicle to exceed the limit of speed in the zone described in subsection (a).  
(Ord. 020-1988-044, Secs. 1:2)

14-203. NO PARKING ZONE. A "No Parking" zone is established on the south line of Randall Street beginning at the west line of South Lancaster Street and continuing west to the east line of College Drive. (Ord. 020-1989-046, Sec. 1)

14-204. NO TRUCK PARKING. A no truck-parking zone is hereby established on both sides of the six hundred (600) block of Plaza Boulevard in Hesston, Kansas.  
(Ord. 020-2004-112; Code 2007)

14-205. EXHAUST BRAKES. It shall be unlawful for the driver of any vehicle to use or operate within the city any mechanical exhaust device designed to aid in the stopping or braking of a vehicle in a manner so as to create excess, loud, or unusual explosive noise from a vehicle. (Ord. 020-1998-086, Sec. 1; Code 2003)

14-206. PARKING BUSES, TRUCKS, TRACTORS, TRAILERS, ETC., MORE THAN TWO HOURS IN RESIDENTIAL DISTRICTS. It shall be unlawful to park a truck with a manufacturer's rated capacity of over three-quarter ton (with the exception of a pick-up truck), or a bus, truck tractor, road tractor, farm tractor, trailer, semi-trailer, boat, boat trailer or camper trailer on any street in a residential district for a period of time longer than two hours, except that parking for a period of time longer than two hours is permitted when it is necessary for the loading or unloading of merchandise and a permit, issued by the police department, authorizing such parking is in possession of the operator or in the vehicle at the time the vehicle is parked for a period of time over two hours. Permits shall be issued for each time that over-parking is necessary. Such a permit shall be only upon a showing that traffic will not be obstructed or public safety endangered.  
(Ord. 020-2006-120; Code 2007)

14-207.

TRAFFIC AND PARKING REGULATIONS ON PRIVATE PROPERTY OF USD No. 460. At such times as there shall be in force and effect a resolution of the Board of Education of USD No. 460 consenting to the traffic and parking regulations of the city being applicable to and enforceable upon improved portions of property owned by USD No. 460 which are provided for the operation and/or parking of vehicles as defined in the Standard Traffic Ordinance, then such private property shall thereafter be deemed to be under the traffic and parking regulations of the city, as provided by law, in addition to such regulations as by law are by their terms applicable to private property; provided, however, that such regulations shall not be enforceable on such property until there shall be posted at each entrance thereto a permanently lettered and clearly legible sign with a legend stating that the traffic and parking regulations of the city are enforced on such property.  
(Ord. 020-2002-099, Sec. 1; Code 2003)

### ARTICLE 3. ABANDONED MOTOR VEHICLES ON PUBLIC PROPERTY

14-301. DEFINITIONS. For the purpose of this article, the following terms, phrases, words and their derivations shall have the following meanings:

(a) Highway. - The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this article, it means street, avenue, boulevard, thoroughfare, alley, and other public way for vehicular travel by whatever name, unless the context clearly indicates otherwise.

(b) Motor Vehicle. - Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(c) Owner or Occupant. - A party having fee simple title in the real property, or a party having a leasehold interest in the real property, or a party who is the beneficiary of a private easement for the purpose of egress or ingress to or from said real property.

(Code 1990)

14-302. IMPOUNDING VEHICLES. The police department may cause to be impounded:

(a) Any motor vehicle unlawfully parked on a highway in violation of any provision of a city ordinance which prohibits the parking of vehicles at the place where or time when the impounded motor vehicle is found.

(b) Any motor vehicle that has been abandoned and left on a highway or other property open to use by the public for a period in excess of 48 hours pursuant to K.S.A. 8-1102.

(c) Any motor vehicle which:

(1) Is subject to removal pursuant to K.S.A. 8-1570, or 8-1102, or

(2) Is subject to seizure and forfeiture under the laws of the state, or

(3) Is subject to being held for use as evidence in a criminal trial.

(d) Any motor vehicle, the continued presence of which, because of the physical location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.

(e) Any motor vehicle which has been abandoned or parked on any real property, other than public property or property open to use by the public, may be moved and disposed of in accordance with the terms of this article by the police department upon the request of the owner or occupant of such real property. The real property referred to herein shall not be owned or leased by the person who abandons or parks said vehicle or by the owner or lessee of such vehicle. The city or any person, partnership, corporation or their agent conducting a business enterprise for the purpose of towing vehicles which removes such vehicle from the real property at the request of the police department shall have a possessory lien on such vehicle for the cost incurred in removing, towing and storing such vehicle. For purposes of this article, common areas shall be construed not to mean public property or property open to the public.

(Code 1990)

14-303. SAME. The police department may authorize storage of such impounded motor vehicles at any location, public or private, which is zoned for the storage of motor vehicles. (Code 1990)

14-304. NOTICE OF IMPOUNDMENT; STORAGE OF VEHICLE. (a) When Owner Present. - When the police department intends to impound a motor vehicle pursuant to section 14-302 and the owner of the motor vehicle is then present, the police department shall before the motor vehicle is removed, provide the owner with a notice, in the form prescribed by the police department that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed for storage without prepayment of towing and storage charges and that the owner may request a hearing as to the propriety of the impoundment and as to the amount of and the owner's liability for the towing and storage charges. The notice shall also state the location where the impounded motor vehicle will be stored and the place where the owner may make his or her request for the hearing. The notice shall also state, in prominent language, that failure by the owner to request a hearing within five days after receipt of the notice may act as a waiver of his or her right to a hearing and that this may result in the placing of a lien against the motor vehicle for the towing and storage charges without further notice to the owner; and that the motor vehicle be sold at public auction to the highest bidder for cash after 15 days from the date of the mailing of the notice. The owner of the impounded motor vehicle shall sign the notice as an acknowledgment that he or she has received a copy of the notice and a copy of the notice shall be provided to the owner.

(b) When Owner not Present. (1) When the police department impounds and removes a motor vehicle pursuant to section 14-302(a) and the owner of the motor vehicle is not present at the time of the impoundment, the police department shall, if such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with said division, mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall be in the form prescribed by the police department containing the same information as required by section 14-304(a). The police department shall use reasonable diligence in determining the title owner, or if from a non-title state, the registered owner, of the vehicle, and shall inquire by mail of the office of the register of deeds of the county in which the title shows the owner resides, if registered in this state, as to whether there are any lienholders of record. If the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed to be a resident of the state whose whereabouts are unknown and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

If the owner does not reside in the state, as appears from the motor vehicle registration and the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed a nonresident of the state and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

(c) Failure or Refusal to Sign Notice. - If any person required by this section to sign a notice of impoundment willfully fails or refuses to do so, or if such person

cannot be found, the police department shall note this fact on the face of the notice, which shall constitute prima facie evidence of delivery or service of notice as required by this section.  
(Code 1990)

14-305.           IMPOUNDMENT AFTER REQUEST TO LEAVE MOTOR VEHICLE. In all cases wherein the owner or operator of a motor vehicle which is on a public street has requested that the motor vehicle be left unattended at that location, in lieu of impoundment of the motor vehicle pursuant to section 14-302, the police department may honor said request for a period of time not exceeding 24 hours, after which time the motor vehicle shall either be removed from the location by the owner or operator or be impounded by the police department pursuant to section 14-304. The police department shall be immune from liability for any damage, loss or destruction of the motor vehicle occasioned by its being left unattended pursuant to the request of the owner or operator thereof, in lieu of impoundment. Nothing in this section shall be construed to limit the authority of the police department to order the removal of a motor vehicle by its owner or operator or to impound a motor vehicle pursuant to section 14-304 at any time whenever in his or her judgment the presence of the unattended motor vehicle constitutes a danger to the public safety.  
(Code 1990)

14-306.           RELEASE OF MOTOR VEHICLE FROM IMPOUNDMENT. (a) Generally. Unless the vehicle is impounded pursuant to section 14-302(b) herein, the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting such release and presenting proof of ownership satisfactory to the custodian of the place where the motor vehicle is stored. If the custodian is satisfied that the person making the request is the owner or his or her authorized agent, he or she shall release the motor vehicle to the owner or his or her agent. Nothing in the preceding sentence shall preclude the owner of the impounded motor vehicle or his or her agent from paying any towing and storage charges that may be assessed against the motor vehicle, but neither the police department nor the custodian of the storage space may require payment of any towing or storage charges as a condition precedent to such release. At the same time as the owner or his or her agent requests release of the impounded motor vehicle, and if such request is made with 40 days after the owner receives a copy of the notice of impoundment, the police department shall provide him or her an opportunity to make a request for a hearing on the propriety of the impoundment and on the amount and his or her liability for the towing and storage charges occasioned by the impoundment; provided, that if the owner or his or her agent requests release of the impounded motor vehicle more than 40 days after the owner receives a copy of the notice of impoundment, no hearing may be requested on the impoundment or on the towing and storage charges and the owner shall be conclusively presumed to have consented to the impoundment and to the amount of and his or her liability for the towing and storage charges.

(b) Security for Payment of Charges. If the ownership of the impounded motor vehicle is evidenced by a title certificate issued by the Kansas Department of Highway Safety and Motor Vehicles, the owner or his or her agent may secure the release of the motor vehicle from impoundment without the payment of any towing or storage charges or the deposit of any security for the payment thereof. If the ownership of the impounded motor vehicle is evidenced by a foreign title instrument, or if the jurisdiction in which title is recorded is not evidenced from the document establishing

ownership, the owner or his or her agent, before the custodian of the place where the motor vehicle is stored authorizes release of the motor vehicle from impoundment, shall deposit with the custodian cash in the amount of the towing and storage charges to the date of the request. If the owner or his or her agent refuses to provide the cash deposit, the custodian shall not authorize release of the impounded motor vehicle but if the request is timely made, a date shall be set for the hearing on the impoundment and charges.

(Code 1990)

14-307.

HEARING. If the owner of an impounded motor vehicle or his or her agent timely requests the release of the motor vehicle from impoundment and a hearing on the impoundment and charges, as provided in section 14-306, a date shall be set, not more than five days after the date of request, for the hearing. The city attorney shall provide a hearing examiner to conduct the hearings required by this section. At the hearing, the owner, his or her agent, or his or her attorney shall be afforded an opportunity to present, by oral testimony or documentary evidence, his or her objections to (a) the impoundment of the motor vehicle and (b) (1) the amount of the towing and storage charges and (2) his or her liability for the payment thereof. If the owner or his or her agent requested the hearing more than five days but not more than 40 days after the owner received a copy of the notice of impoundment, the owner, his or her agent or his or her attorney shall be required at the hearing, as a condition precedent to the presentation of any objections by the owner, to show good cause for the delay in making the request more than five days after the owner received a copy of the notice of impoundment: if good cause cannot be shown, the hearing officer shall dismiss the hearing and make the finding stated in subsection (b) below; otherwise, the hearing examiner shall proceed to hear the owner's objections. At the conclusion of the hearing on the owner's objections, the hearing examiner shall render his or her decision if the hearing examiner:

(a) Finds that the impoundment was improper, he or she shall:

(1) Find that the owner is not liable for any towing or storage charges occasioned by the impoundment and

(2) Determine whether and to what extent the city shall be the expense of the towing and storage charges; or

(b) Finds that the impoundment was proper, he or she shall establish:

(1) The amount of the towing and storage charges to be assessed against the impounded motor vehicle and

(2) The extent of the liability of the owner for payment of the towing and storage charges so established. The decision of the hearing examiner shall be final, and a copy of the decision shall be furnished to the owner of the impounded motor vehicle, to the custodian of the place where the motor vehicle is stored and to the city attorney.

In the event that the impoundment was pursuant to K.S.A. 8-1102(b), the owner or occupant of the real property upon which the abandoned vehicle was located shall not be assessed the costs of towing and storage of the vehicle. Further, nothing within this article shall be construed to modify or effect the validity of the possessory lien of the person removing such vehicle from the real property established by K.S.A. 8-1102(b).

(Code 1990)



14-308. CHARGES CONSTITUTE A LIEN. The towing and storage charges occasioned by the impoundment of a motor vehicle pursuant to section 14-302 shall be and constitute a lien upon the impounded motor vehicle, except as provided in this section. If the hearing examiner finds pursuant to section 14-307 that the impoundment was improper and if he or she determines that the city shall bear part or all of the towing and storage charges, the lien created by this section shall be discharged. If the hearing examiner finds pursuant to section 14-306 that the impoundment was proper but that the towing and storage charges should be in an amount less than the amount of the lien, the lien created by this section shall be discharged to the extent that it exceeds the amount established by the hearing examiner. The holder of a lien created by this section may perfect such lien in any manner provided by law, but he or she may not retain possession of the motor vehicle when it has been released pursuant to section 14-306(a). In the event that the impounded motor vehicle is released from impoundment and the owner or his or her agent has provided security for payment of charges as required by section 14-306(b), the lien created by this section shall also be a lien against the security so provided, subject to being wholly or partially discharged as provided in this section. (Code 1990)

14-309. SATISFACTION OF LIEN; NOTICE OF PUBLIC SALE. The holder of a lien against a motor vehicle created by section 14-308, to the extent that such lien has not been discharged as provided in section 14-308 or otherwise satisfied, may enforce such lien in any manner provided by law after 60 days from the date the motor vehicle is impounded by the police department. If the owner of the motor vehicle or his or her agent has provided security for the payment of the lien as provided in section 14-306(b), the lien shall first be satisfied out of the security so provided and, if any portion of the lien remains unsatisfied and undischarged, may then be enforced in any manner provided by law. If the motor vehicle against which the lien is created pursuant to section 14-308 is still under impoundment 60 days from the date it is impounded by the police department and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and storage charges that are the basis for the lien, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. Notice of the sale shall be given in accordance with K.S.A. 8-1102. Publication, required by K.S.A. 8-1102, may be made before the termination of the 60 day period for a sale thereafter. (Code 1990)

14-310. REDEMPTION. If the city is to conduct the sale:  
(a) Any holder of a recorded lien or retained title on a motor vehicle to be sold by the city under the provisions of section 14-309 may claim and take possession thereof, upon payment of accrued charges and estimated costs of publication of the notice of sale to the police department and the deposit with the police department of sufficient assurance by surety bond or otherwise, approved by the city attorney, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The police department shall, within three days, make a report to the city treasurer and deliver the charges and costs so paid to the city treasurer, taking a receipt therefor and filing it, together with a duplicate copy of the report to the city treasurer, with the records in his or her office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the police department shall notify the lienholder or retained titleholder of the time and place for the sale, and the

lienholder or retained titleholder shall deliver such motor vehicle to the police department at or before 12:00 noon of the day before the sale. At the sale the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the police department shall report this fact to the city treasurer and then the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the city for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to any person other than the lienholder or retained titleholder, the police department shall report this fact to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him out of the trust account.

(b) And if the rightful owner of the motor vehicle claims the same before the sale by payment of the accrued charges, the police department shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he or she shall return the same to the police department within 12 hours. The police department shall report this redemption by the rightful owner to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the trust account.

(Code 1990)

14-311. SALE PROCEEDS. The proceeds of a public sale held pursuant to section 14-308 whether such sale was conducted by the city or by any other person, after payment of the towing and storage charges and costs and expenses incident to the sale, shall be deposited with the city treasurer, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this section shall remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the funds shall become the property of the city, be released from the trust account and be paid into the general fund as miscellaneous revenues. (Code 1990)

14-312. STATUTORY PROCEDURES. Nothing in this article shall be construed to augment, diminish, supersede or otherwise interfere with any statutory procedure established by the legislature for the collection of unpaid towing and storage charges. The procedures in this article are supplementary and cumulative to any statutory procedures. (Code 1990)

14-313. IMPLEMENTATION OF ARTICLE. The police department and city treasurer are authorized to make rules for the implementation and administration of this article. (Code 1990)

14-314. REIMBURSEMENT FOR DISCHARGED LIENS. If a lien created by section 14-308 and held by a private wrecker or towing firm is discharged by section 14-308 pursuant to a determination by a hearing examiner that an impoundment was improper and that the city shall bear part or all of the towing and storage charges, the city shall pay to the firm the amount determined by the hearing examiner. No payment shall be made until it is authorized by the city attorney. (Code 1990)

## **ARTICLE 4. HAZARDOUS MATERIALS**

- 14-401.           **HAZARDOUS MATERIAL DEFINED.** As used in this article, the term hazardous material shall mean any material or combination of materials which, because of its quantity, concentration, or physical, chemical, biological, or infectious characteristics, poses a substantial present or potential hazard to human health or safety or the environment if released into the workplace or environment or when improperly treated, stored, transported, or disposed of or otherwise managed.  
(Code 2003)
- 14-402.           **SAME; EXCEPTIONS.** The provisions of this article shall not apply to any container which shall have a capacity of 150 gallons or less which shall be used for the purpose of supplying fuel for the vehicle on which it is mounted. These provisions shall also not apply to vehicles, trailers, containers or tanks containing anhydrous ammonia or other material primarily used by farmers for fertilizer purposes when such vehicles, trailers, containers or tanks are parked or housed upon property designated for the placement of such vehicle, trailer, container or tank by any farmers cooperative, elevator company or farm supply store located within the city limits.  
(Code 1990)
- 14-403.           **TRANSPORTATION OF HAZARDOUS MATERIALS.** Except as provided in section 14-404 it shall be unlawful for any person, firm, corporation or other entity to transport any hazardous material upon any street, avenue, highway, road, alley or any other public right-of-way in the city. (Code 1990)
- 14-404.           **HAZARDOUS MATERIALS ROUTES.** The provisions of section 14-403 shall apply to all streets, avenues, highways, roadways, alleys or other public right-of-ways within the city except those specified within this section where transportation of hazardous materials shall be allowed. Transportation of hazardous materials shall be allowed upon the following streets, avenues, highways or roadways:  
                    (a) (Reserved)  
                    (b) (Reserved)  
                    (c) (Reserved)  
(Code 1990)
- 14-405.           **PARKING OF VEHICLES OR TRAILERS CARRYING HAZARDOUS MATERIALS.** (a) Except as provided in subsections (b) and (c), it shall be unlawful for any person, firm, corporation or other entity to park any vehicle, trailer or semi-trailer carrying any hazardous material within any of the following city zoning districts as defined in Chapter 16 of this code:  
                    (1) (Reserved)  
                    (b) Subsection (a) shall not apply to vehicles, trailers or semi-trailers parked for continuous periods of time not to exceed one hour where such vehicles, trailers or semi-trailers are parked along those routes specified in section 14-404 of this code.  
                    (c) Subsection (a) shall not apply to any vehicle, trailer or semi-trailer carrying any hazardous material where such vehicle, trailer or semi-trailer is not parked within 500 feet of any structure used for human habitation.  
(Code 1990)
- 14-406.           **REMOVAL OF ILLEGALLY PARKED TRAILERS.** If any vehicle, trailer or a

semi-trailer is found parked in violation of the provisions of this article, the director of emergency services or assistant chief or any law enforcement officer may require the owner, operator or lessee of the trailer to move it within two hours. If such removal is not accomplished on the order of any such officer, it may be accomplished by any such officer, by any reasonable means, if the continued presence of the trailer or semi-trailer at its parked location constitutes, adds to or prevents correction of a situation threatening imminent injury or damage to persons or property. (Code 1990)

## **ARTICLE 5. OPERATION OF GOLF CARTS WITHIN THE CITY**

14-501. **DEFINITIONS.** The following terms when used in this Article shall have the meanings hereinafter described:

(a) **Golf Cart** - A vehicle designed and manufactured for operation on a golf course for sporting, or recreational purposes that is not capable of exceeding speeds of 25 miles per hour. A golf cart must have not less than three wheels in contact with the ground, an unladen weight of not more than 1800 pounds and be designed to carry not more than four persons including the driver, and must be otherwise as described in the Standard Traffic Ordinance, as from time to time incorporated and in effect.

(b) **Driver's License** - A valid driver's license issued by the State of Kansas (or any other state) to operate a motor vehicle.

(c) **Financial Responsibility** - Liability insurance coverage on a golf cart in an amount not less than that required by Kansas law for motor vehicles operated on public highways in the State of Kansas.

(d) **Operator** – Shall include only (i) persons holding a valid Driver's License, or (ii) disabled persons operating a golf cart as a “power-driven mobility device” within the meaning of the Americans with Disabilities Act (as from time to time amended), provided such an Operator is displaying a handicap placard properly issued by the State of Kansas or other state as credible assurance of the necessary accommodation.

14-502. **RULES AND REGULATIONS.**

(a) Golf carts may only be operated by defined Operators upon the public highways, streets, roads and alleys within the corporate limits of the City in accordance with the limits of Kansas law and the City's Standard Traffic Ordinance. No golf cart may be operated upon any public highway, street, road or alley with a posted speed limit in excess of 30 miles per hour. No golf cart shall be operated on any interstate highway, federal highway or state highway; provided, however, that the provisions of this subsection shall not prohibit a golf cart from crossing an intersecting federal or state highway (or a street or highway with a posted speed limit in excess of 30 miles per hour). Once a segment of intersecting highway has been traversed, the golf cart is still required to travel only on or along a roadway with a speed limit of 30 mph or less. Golf carts must cross intersections in a manner that is the most direct route of intersection in order to decrease crossing distance. Crossing federal or state highways (or other roads upon which golf carts are not permitted for operation) at an extended angle beyond the intersection shall not be permitted.

(b) Any Operator of a golf cart is responsible for all liability associated with operation of the golf cart.

(c) Operators with a Driver's License must carry their driver's license and proof of Financial Responsibility on their person at all times while operating a golf cart on public roads. Such Operators shall only be permitted to operate a golf cart within the terms and provision of any restrictions otherwise contained on their Driver's License.

(d) Any person who operates a golf cart on public streets and roads must adhere to all applicable State and local laws, regulations and ordinances and traffic control devices generally (including, but not limited to, those set forth in Section 114.4 of the Standard Traffic Ordinance, as the same may be amended or substituted and those banning the possession and use of alcoholic beverages or other illegal substances when operating a motor vehicle). In addition, no golf cart containing any open container of alcohol shall be operated on public roads.

(e) All Operators of a golf cart shall comply with all traffic rules and regulations adopted by the State of Kansas and the City (including a traffic control devices) which otherwise govern the operation of motor vehicles on public rights-of-way.

(f) No Operator may allow the number of people in the golf cart to exceed the maximum capacity specified by the manufacturer. No Operator shall allow passengers to ride on any part of a golf cart not designed to carry passengers (e.g. the part of the golf cart designed to carry golf bags). No Operator shall allow a passenger in a golf cart who is otherwise required by Kansas law to use a child restraint or child safety seat when said passenger is a motor vehicle generally.

(g) Golf carts must be operated at the right edge of the roadway and must yield to all vehicular and pedestrian traffic.

(h) Golf carts shall not be operated after sunset or before sunrise, unless equipped with properly approved lights, as described in the Standard Traffic Ordinance and Kansas law (currently Section 114.4 (c) and K.S.A. 8-15,108).

(i) Golf carts must have basic equipment originally supplied by the manufacturer, including a vehicle identification or serial number. Such equipment must include all safety devices as originally installed by said manufacturer. If a mechanical turn signal indicator is not installed, then hand signals are required on turns in accordance with Kansas law.

(j) Any violation of this Article of the Code pertaining to golf carts shall be considered and treated as a violation of Section 114.4 or other relevant provisions of the Standard Traffic Ordinance (including any amendments or substitutions therefor) as then in effect in the City.

#### 14-503. REGISTRATION, INSPECTION AND FEES PRIOR TO USAGE.

(a) Before operating any golf cart on any public highway, street, road or alley within the corporate limits of the City, the vehicle must be registered with the police department and display a valid registration decal or tag affixed and displayed in such a

manner as to be clearly visible from the rear of the vehicle. The application shall be made upon forms provided by the City and each application shall contain the name of the owner, the owner's residence address, or bona fide place of business, a brief description of the vehicle to be registered (including make, model number, and serial number, if applicable). A \$25.00 one-time registration fee shall be collected by the City for the registration of any golf cart which will at any time be operated by an Operator with a Driver's License.

(b) Registration of a golf cart shall be non-transferable.

(c) Each owner seeking to register a golf cart must have proof of ownership and a completed Waiver of Liability, releasing the City from any liability that may arise as a result of operation of a golf cart inside City. Operators with a Driver's License must show proof of Professional Responsibility.

(d) Lost or stolen registration tags or decals are the responsibility of the owner and must be re-registered with payment of any applicable registration fee before the golf cart is operated on a public street.

(Ordinance No. 020-2019-169)

## CHAPTER XV. UTILITIES

- Article 1. General Provisions
- Article 2. Water
- Article 3. Sewers
- Article 4. Gas
- Article 5. Solid Waste
- Article 6. Water Conservation

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### ARTICLE 1. GENERAL PROVISIONS

- 15-101. DEFINITION. For purposes of this article utility services shall include water, gas, sewer, solid waste (refuse) and other utility services provided by the city. (Ord. 150-1984-011, Sec. 1; Code 1990)
- 15-102. DELINQUENT ACCOUNTS. Unless otherwise provided, water, gas, sewer, solid waste (refuse) or other utility service shall be terminated for nonpayment of service fees or charges in accordance with sections 15-103:104. (Code 1990)
- 15-103. SAME; NOTICE. (a) If a utility bill has not been paid on or before the due date as provided in this chapter, a delinquency and termination notice shall be issued in writing by the city clerk on the 15th day of the month and mailed to the customer at his or her last known address. A copy also shall be mailed to the occupant of the premises if the occupant and the customer are not the same person.
- (b) The notice of account delinquency and service discontinuance shall provide the following information:
- (1) The name of the customer and address where service is being provided;
  - (2) The account number.
  - (3) The amount due, plus delinquency charge;
  - (4) Notice that service will be terminated if the amount due is not paid by the 25th day of the month unless the 25th shall be on a Saturday, Sunday or legal holiday, in which event such notice will give the consumer until the close of the next business day in which to pay the charges;
  - (5) Notice that the customer has the right to a hearing before the designated hearing officer;
  - (6) Notice that the request for a hearing must be in writing and filed with the city clerk no later than three days prior to the date for termination of service.
- (c) The notice of account delinquency and service discontinuance shall be substantially in the following form:

LATE NOTICE. We have not received payment on your current bill and a late penalty has been added to your account balance. This notice reflects the past due balance. Please give this notice your utmost attention and pay immediately.

If you feel that you have received this notice in error, call the City of Hesston office.

Please disregard this notice if payment has already been made.

CUT-OFF NOTICE. Failure to pay the past due amount prior to 9:00 am on the 25th of this month will result in your utility services being terminated WITHOUT FURTHER NOTICE. Reconnection of services will require payment of the entire past due amount, PLUS a \$20.00 reconnection charge And an additional deposit. (Ord. 150-1984-011; Sec 4; Code 2007)

15-104. SAME; HEARING. Any utility customer receiving a notice of account delinquency and service discontinuance shall have the right to a hearing prior to disconnection. At such hearing, the applicant customer and the city shall have the right to present such evidence as is pertinent to the issue, may be represented by council and may examine and cross-examine witnesses, however formal rules of evidence shall not be followed. The hearing shall be conducted by a hearing board appointed by the mayor, with the consent of the governing body. In the event the hearing board finds utility service(s) should not be disconnected the hearing board shall so order and advise the city thereof. Unless otherwise ordered by the hearing board, utility service(s) shall be discontinued on the date that the order of discontinuance is issued by the hearing board. Extensions of the date of discontinuance may be granted to enable the customer to make arrangements for reasonable installment payments or for other good cause shown. The customers shall be given notice of order of discontinuance in person, or by certified mail. In making a determination of whether discontinuance should be ordered, the hearing board shall consider but not be limited to, the following factors: Whether discontinuance is dangerous to the health of the customer, the customer's family or any other residents of the premises affected; the weather; unforeseen financial hardship of the customer; and the medical conditions, ages or disability of the customer, the customer's family or other residents of the premises. (Ord. 150-1984-011, Sec. 4)

15-105. UTILITY DEPOSIT (a) Each new business owner making application for utility service shall make a deposit based on anticipated usage and each non-owner of real property (tenants of apartments, mobile home owners, and renters) shall make a cash deposit in the amount set by the governing body to secure payment of accrued bills or bills due on discontinuance of service. Receipt thereof shall be issued to each such depositor.

(b) Cash deposits for residential utility services shall be in the following amounts:

- (1) Gas Service - \$100.00;
- (2) Water Service - \$50.00;

(c) The deposit so made shall be kept by the city clerk in a separate account and deposited in a fund designated as the "utility deposit fund." Interest shall be payable at the rate determined by the state corporation commission yearly as a credit in the February 1st utility billing of each year. Interest accrued shall be payable in cash upon demand by the account holder depositing the same or it may be credited on the payment of any bill rendered; provided, that at the third interest payment date following the deposit required above, the city clerk may refund the deposit of any residential depositors who is the account holder wherein



such water and/or gas service is being furnished and has not been delinquent in payment of any utility service charge during the past two years. Interest due and accrued shall not draw interest.

(d) Upon the discontinuance of any service at the request of the depositor, the deposit shall be refunded upon surrender of the original receipt therefore together with the accrued interest thereon less any amount due and owing the city for services furnished prior thereto.

(e) Any security deposit not refunded within three years after discontinuance of service shall be deposited in the water fund of the city upon compliance with the provisions of K.S.A. 12-822 as amended.

(Ord. 150-1987-016; Ord. 110-1987-048, Ord. 110-2011-072)

15-106. LANDLORD LIABILITY. (a) Owners of premises served by utility service under this article shall be liable for payment of the cost of any utility service account delinquency arising from service provided to such premises, regardless of whether the utility service was furnished upon the application and request of the owner or the lessee of the premises. This provision shall also apply when the premises are leased by or through an agent or other representative of the owner.

(b) In the event a delinquency arises involving leased premises, the owner or owner's agent shall be notified in writing of the delinquency of the lessee by first class regular mail within 10 days after the billing to the lessee becomes delinquent. Notice shall be sufficient if mailed to the last known address of the owner or owner's agent known to city personnel responsible for said mailing, after reasonable inquiry. If the delinquent billing, interest and penalty are not paid within 15 days of the mailing, the affected utility service may be discontinued and no further such service shall be furnished by the city to the premises until all billings for the utility service to said premises, interest, late payment charges and a reconnection charge, if applicable, is paid in full.  
(Code 1990)

15-106A. LIABILITY OF PROPERTY OWNER; LIEN. (a) If utility service is furnished to leased premises on the application and request of the lessor of the premises, then all billings for utilities furnished to such leased premises shall be made directly to the lessor, and the lessor shall be fully liable for the cost of service furnished.

(b) Such charges shall constitute a lien upon the real estate served, and shall be certified by the city clerk to the county clerk, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes collectible by law.  
(Code 1990)

## **ARTICLE 2. WATER**

15-201. REGULATIONS. The furnishing of water to customers by the city through its waterworks system shall be governed by the regulations set out in this article.  
(Code 1990)

- 15-202. SERVICE NOT GUARANTEED. The city does not guarantee the delivery of water through any of its mains and connecting services at any time except only when its mains, pumping machinery, power service connection are in good working order, and the supply of water is sufficient for the usual demand of its consumers. (Code 1990)
- 15-203. SERVICE CONNECTIONS REQUIRED. (a) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the city abutting on any street, alley, or right-of-way in which there is now located or may in the future be located public water mains, is hereby required at his or her own expense to make connection to such public water main.  
(b) Before any connection is made to the city's water system an application must be made in writing to the city clerk by the owner of the premises, or his or her authorized representative, for a permit to make such connection. (Code 1990)
- 15-204. APPLICATION FOR SERVICE. (a) Any person, firm or corporation desiring a connection with the municipal water system shall apply in writing to the city clerk, on a form furnished by the city for that purpose, for a permit to make the connection.  
(b) The application shall:  
(1) Contain an exact description including street address of the property to be served;  
(2) State the size of tap required;  
(3) State the size and kind of service pipe to be used;  
(4) State the full name of the owner of the premises to be served;  
(5) State the purpose for which the water is to be used;  
(6) State any other pertinent information required by the city clerk;  
(7) Be signed by the owner or occupant of the premises to be served, or his or her authorized agent.  
(c) Each application for a connection permit shall be accompanied by payment of fees and/or costs specified in section 15-206. (Code 1990)
- 15-205. CITY TO MAKE CONNECTIONS. All taps shall be given, street excavations made, corporation cocks inserted, pipes installed from main to curb, and the curb cock installed in a meter box to which the service pipe is to be connected by city employees only. (Code 1990)
- 15-206. CONNECTION FEES. The fee for connecting new meters to the City's waterworks system shall be the rate required to fully reimburse the City's actual cost of the specified meter and automatic meter reading appurtenances, plus the estimated hourly expense (at a rate of \$25.00 per hour) for connection to the City's waterworks system. (Ord. 020-2020-175)
- 15-207. CHECK VALVES. Check valves are required on all connections to steam boilers or on any other connection deemed necessary by the city. Safety and relief valves shall be placed on all boilers or other steam apparatus connected with the

water system where the steam pressure may be raised in excess of 40 pounds per square inch. (Code 1990)

15-208. UNAUTHORIZED SERVICE. It shall be unlawful for any person, firm, or corporation, other than duly authorized persons to turn water on or off at the water meter or curb cock shut off, with a key or in any other manner. (Code 1990)

15-209. CROSS CONNECTION CONTROL. The governing body hereby establishes a program whose purpose is:

(a) To protect the public water supply system from contamination due to cross connections;

(b) To promote the elimination, containment, isolation or control of cross connections between the public water supply system and non-potable water systems, plumbing fixtures, and industrial process systems or other systems which introduce or may introduce contaminants into the public water system or the consumer's water system, and;

(c) Provide an effective means of enforcing cross connection protection through a program of inspection, education and technical assistance.

(Ord. 110-1991-055, Sec. 1)

15-209a. CROSS CONNECTIONS PROHIBITED. No water service shall be installed or maintained to any premises where actual or potential cross connections to the public water supply system may exist unless such actual or potential cross connections are abated or controlled to the satisfaction of the city. No connection shall be installed or maintained whereby an auxiliary water supply may enter a public water supply system either directly or indirectly.

(Ord. 110-1991-055, Sec. 1)

15-209b. CROSS CONNECTION CONTROL OFFICER. The cross connection control officer shall be responsible for effectively conducting and administering the city's cross connection control program. If, in the judgment of the cross connection control officer, cross connection protection is required through either piping modifications or installation of an approved backflow prevention device, due notice shall be given to the consumer who shall, within the time frame established by the cross connection control officer, comply with the notice by providing and installing the required protection at his or her own expense. Failure, refusal, or inability on the part of the consumer to provide such protection shall constitute grounds for the discontinuance of water service to the premises until such protection has been provided. (Ord. 110-1991-055, Sec. 1)

15-209c.

DEFINITIONS. (a) Agency: The City of Hesston, Kansas.

(b) Air Gap Separation: The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the overflow level of the receptacle, and shall be at least double the diameter of the supply pipe measured vertically above the flood level rim of the vessel, but in no case less than one inch.

(c) Approved Tester: A person qualified to make inspections; to test and repair backflow prevention/cross connection control devices; and who is approved by the city.

(d) Auxiliary Water Supply: Any water source or system, other than the city's, that may be available in the building or premises. This does not include other public water supply systems approved by the Kansas Department of Health and Environment.

(e) Backflow: The flow of other than the intended direction of any foreign liquids, gases, used water or substances into the public water supply distribution system.

(f) Backflow Prevention Device: Any device, method, or type of construction intended to prevent backflow into the public water supply system.

(g) Consumer: Any individual, firm, partnership, corporation, or agency or their authorized agent receiving water from the city.

(h) Contamination: An introduction of any sewage, process fluids, chemicals, wastes or any other substance that would be objectionable. Contamination may be a threat to life or health, or may cause an aesthetic deterioration, color, taste or odor.

(i) Cross Connection: Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water of the public water supply system, and the second, water of unknown or questionable safety, or steam, gases, chemicals, or substances whereby there may be the backflow of the second system to the public water supply system. No physical cross connection shall be permitted between a public water supply system and an auxiliary water supply system.

(j) Cross Connection Control and Backflow Prevention Devices: Any device recognized by the Kansas Department of Health and Environment and approved for use. The following devices are recognized cross connection control and backflow prevention devices:

(1) Air Gap: Considered to be a cross connection control device as the result of unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the overflow level rim of the receptacle. The gap must be two pipe diameters but in no instance less than one inch.

(2) Reduced Pressure Principle Backflow Preventer: A device containing two specifically designed, soft-seated, independently acting check valves with a reduced pressure zone (with relief valve) between the two checks and with shut-off valves before and after the device.

(3) Double Check Valve Assembly: A device containing two soft-seated independently acting check valves in series with shut-off valves before and after the device.

(4) Pressure Vacuum Breaker: A device which must be installed a minimum of 12 inches above the highest point of usage. This device is not designed for use under constant pressure. A shut-off valve must be located ahead of the vacuum breaker device.

(k) Degree of Hazard: An evaluation of the potential risk to public health and the adverse effect of the hazardous upon anyone using the water.

(l) Health Hazard: Any condition, device, or practice in the public water supply system which could create or may create a danger to the health and well-being of anyone using the water or allowing contamination of the water.

(m) Individual Water Supplies: Any water supply other than the public water supply which is operated on a private basis outside the control or authorization of the city. Individual water supplies include irrigation wells, cisterns, storage tanks, and various other privately owned or operated systems.

(n) Public Water System: The water supply source distribution system and appurtenances to the service meter operated by a public utility which supplies potable water to the consumers' water systems.

(o) Public Water Supply System: The public water system and consumer's water system.

(p) Service Connection: the terminal end of the service line from the public water system. If a meter is installed at the end of the service, the service connection means the downstream end of the meter.

(q) Water System-Consumer's: All service pipe, all distribution piping and all appurtenances beyond the service meter of the public water system.

(Ord. 110-1991-055, Sec. 1)

15-209d. SURVEYS AND INVESTIGATIONS. The consumer's premises shall be open at all reasonable times to the city or its authorized representative, or the conduction of surveys and inspections of water use practices within the consumer's premises to determine whether there are actual or potential cross connections in the consumer's water system. On request by the city, the consumer shall furnish requested information on water use practices within his or her premises and in the consumer's water system. The consumer shall, at the request of the city, conduct periodic surveys of water use practices on the premises of the consumer's water system to determine whether there are actual or potential cross control connections. The consumer shall, upon request of the city, provide the results of the survey to the city. (Ord. 110-1991-055, Sec. 1)

15-209e. PROTECTION REQUIRED. (a) An approved backflow prevention device shall be installed on each service line to a consumer's water system servicing premises where, in the judgment of the city or the Kansas Department of Health and Environment, actual or potential cross connections exist. The type and degree of protection required shall be commensurate with the degree of hazard and/or type of contamination that may enter the public water supply system.

(b) An approved air gap separation or reduced pressure principle backflow prevention device shall be installed at the service connection or within any premises where, in the judgment of the city or the Kansas Department of Health and Environment, the nature and extent of activities on the premises, or the materials used in connection with the activities, or materials stored on the premises, would present a health hazard or contamination of the public water

supply system from cross connection. This includes, but is not limited to the following situations:

(1) Premises having an auxiliary water supply, unless the quality of the auxiliary supply is acceptable to and authorized by the Kansas Department of Health and Environment;

(2) Premises having internal plumbing arrangements which make it impractical to ascertain whether or not cross connections exist;

(3) Premises where entry is restricted so that inspection for cross connections cannot be made with sufficient frequency or on sufficiently short notice to assure that cross connections do not exist;

(4) Premises having a repeated history of cross connections being established or re-established;

(5) Premises, which due to the nature of the enterprise therein, are subject to recurring modification or expansion;

(6) Premises on which any substance is handled under pressure so as to permit entry into the public water supply system, or where a cross connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters;

(7) Premises where toxic or hazardous materials are handled.

(c) The following types of facilities fall into one or more of the categories or premises where an approved air gap separation or reduced pressure principle backflow prevention device may be required by the city or the Kansas Department of Health and Environment to protect the public water supply and must be installed at these facilities unless all hazardous or potentially hazardous conditions have been eliminated or corrected by other methods to the satisfaction of the city or the Kansas Department of Health and Environment:

(1) Agricultural chemical facilities;

(2) Auxiliary water supply systems wells;

(3) Boilers;

(4) Bulk water loading facilities;

(5) Car washing facilities;

(6) Chemical manufacturing, processing, compounding or treatment plants;

(7) Chill water systems;

(8) Cooling towers;

(9) Feedlots;

(10) Fire protection systems;

(11) Hazardous waste storage and disposal sites;

(12) Hospitals, mortuaries, clinics or others as discovered by sanitary surveys;

(13) Irrigation and sprinkler systems;

(14) Laundries and dirty cleaning facilities;

(15) Meat processing facilities;

(16) Metal manufacturing, cleaning, processing and fabrication plants;

(17) Metal manufacturing, cleaning, processing and fabrication plants;

(18) Oil and gas production, refining, storage or transmission properties;

(19) Plating plants;

(20) Power plants;

(21) Research and analytical laboratories;

(22) Sewage and storm drainage facilities - pumping substation and treatment plants;

(23) Veterinary clinics.  
(Ord. 110-1991-055, Sec. 1)

15-209f. LAWN IRRIGATION SYSTEMS. (a) An approved pressure vacuum breaker or reduced pressure principle backflow preventor shall be installed on all new law irrigation sprinkler systems.

(b) All lawn sprinkler systems that have no backflow protection shall be so protected within 90 days from the date of the enactment of this section or prior to usage, whichever is later.

(c) All lawn sprinkler systems with improper backflow protection shall be retrofitted with proper protection at the time any repairs, changes or improvements are made to the system.

(Ord. 110-1991-055; Sec. 1)

15-209g. BACKFLOW PREVENTION DEVICES. (a) Any backflow prevention device required by this section shall be a model or construction approved by the city or the Kansas Department of Health and Environment.

(1) Air gap separation to be approved shall be at least twice the diameter of the supply pipe, measured vertically above the top rim of the vessel, but in no case less than one inch.

(2) Double check valve assemblies or reduced pressure principle backflow prevention devices to be authorized for use must appear on the current list of approved backflow prevention devices established by the Kansas Department of Health and Environment, unless the device was installed at the time this article was passed and provided such device complies with the required inspection and maintenance.

(Ord. 110-1991-055, Sec. 1)

15-209h. INSTALLATION. (a) Backflow prevention devices required by this section shall be installed at a location and in a manner approved by the city. All devices shall be installed at the expense of the consumer, unless the city agrees otherwise, and must comply with all standards and applications as provided in the most current addition of the Uniform Plumbing Code of the International Conference of Plumbing and Mechanical Officials.

(b) Backflow prevention devices installed at the service connection shall be located on the consumer's side of the water meter, as close to the meter as is reasonably practical, and prior to any connection.

(c) Backflow prevention devices shall be conveniently accessible for maintenance and testing, protected from freezing, and where no part of the device will be submerged or subject to flooding by any fluid. All devices shall be installed according to manufacturers' recommendations.

(Ord. 110-1991-055, Sec. 1)

15-209i. INSPECTION AND MAINTENANCE. (a) The consumer is required by this section to inspect, test, and overhaul backflow prevention devices in accordance with the following schedule or more often as determined by the city.

(1) Air gap separations shall be inspected at the time of installation and at least monthly.

(2) Double check valve assemblies shall be inspected and tested for tightness at the time of installation and at least every 12 months thereafter. They shall be dismantled, inspected internally, cleared, and repaired whenever needed and/or testing reports failure.

(3) Reduced pressure principle backflow prevention devices shall be inspected and tested for tightness at the time of inspection and at least every 12 months thereafter. They shall be dismantled, inspected internally, cleaned, and repaired whenever needed and/or testing reports failure.

(b) Inspections, tests and overhauls of backflow prevention devices shall be made at the expense of the consumer and shall be performed by an approved tester.

(c) Whenever backflow prevention devices required by this policy are found to be defective, they shall be repaired or replaced without delay at the expense of the consumer.

(d) The consumer must maintain a complete record of each backflow prevention device from purchase to retirement. This shall include a comprehensive listing that includes a record of all tests, inspections, and repairs. All records of inspections, tests, repairs, and overhauls shall be provided within 30 days to the city.

(e) All backflow prevention devices shall have a tag showing the date of the last inspection, test, overhaul or other maintenance.

(f) Backflow prevention devices shall not be bypassed, made inoperative, removed, or otherwise made ineffective without specific authorization by the city. (Ord. 110-2004-067, Sec. 1; Ord. 110-1991-055, Sec. 1; Code 2007)

15-209j. VIOLATION AND PENALTIES. (a) The city may deny or discontinue the water service to any premises or any consumer wherein any backflow prevention device required by this policy is not installed, tested, and maintained in a manner acceptable to the city, or if it is found that the backflow prevention device has been removed or bypassed, or if an unprotected cross connection exists.

(b) Water service to such premises shall not be restored until the consumer is in compliance with this cross connection ordinance to the satisfaction of the city. (Ord. 110-1991-055, Sec. 1)

15-210. METERS. (a) All water furnished to customers shall be metered.

(b) Meters shall be located between the sidewalk or property line and curbing when the main is in the street, and on private property within three feet of the alley line when the main is in the alley. In the business district the meters may be installed in the basement at a location specified by the city.

(c) The city's responsibility stops at the property line. (Code 1990)

15-211. TAMPERING WITH METER. It shall be unlawful for any person to break the seal of any meter, to alter the register or mechanism of any meter, or to make any outlet or connection in any manner so that water supplied by the city may be used or wasted without being metered. (Code 1990)



- 15-212. DISCONNECTION OF SERVICE FOR NONPAYMENT. Any service disconnected for nonpayment of delinquent bill shall be reconnected only upon payment of the delinquent bill, interest penalty thereon, an additional meter deposit of \$10.00 and the reconnection charge of \$20.00. (Code 2007)
- 15-213. SECURITY DEPOSITS. (a) All non-owners of residential real estate (tenants of apartments, mobile home owners, and renters) shall be assessed a \$50.00 deposit.
- (b) Security deposits for commercial and industrial accounts shall be established by the city clerk and shall be held as security for payment of all charges. Such security deposits may be set at any reasonable amount based on prior experience but shall not exceed \$5,000.00.
- (c) In lieu of a cash security deposit the city clerk is authorized to accept surety bonds, with such sureties as are acceptable, payable to the city clerk, in an amount not less than the applicable cash security deposit established by the city clerk.
- (d) Commercial and industrial security deposits may be refunded after five years of continual service if the account has been kept current and has not been assessed delinquent penalties for late payments.
- (e) The city will pay at least the minimum rate of interest as established under the provisions of K.S.A. 12-822 to the customer on the security deposit at least once each year. Payment may be in the form of a credit to the customer account or actual cash or check refund as determined by the city clerk.
- 15-214. INTERRUPT SERVICE. The city reserves the right to interrupt water service for the purpose of making repairs or extensions to water lines or equipment. (Code 1990)
- 15-215. PROHIBITED ACTS. It shall be a violation of this article for any unauthorized person to:
- (a) Perform any work upon the pipes or appurtenances of the city's waterworks system beyond a private property line unless such person is employed by the city contracted by the city or duly authorized by the city;
- (b) Make any connections with any extension of the supply pipes of any consumer without written permission to do so having been first obtained from the city;
- (c) Remove, handle or otherwise molest or disturb any meter, meter lid, cutoff, or any other appurtenances to the water system of the city; (Code 1990)
- 15-216. WASTING WATER. Water users shall prevent unnecessary waste of water and shall keep sprinklers, hydrants, faucets and all apparatus, including the service line leading from the property to the meter in good condition at their expense. (Code 1990)

- 15-217. WATER RATIONING. The city reserves the right to restrict or prohibit the use of water and to specify the purposes for which it may be used whenever the governing body determines the public exigency so requires. (Code 1990)
- 15-218. SAME; PROCEDURE. Whenever the governing body determines that water use must be restricted or prohibited, it shall forthwith issue a proclamation of emergency through the news media and use other appropriate methods of making public the proclamation. (Code 1990)
- 15-219. SAME; PRIORITY USE. In the event a proclamation of emergency is issued, water usage will be restricted or prohibited first for uses in the following priority:
- (a) Water lawns, gardens, trees, shrubs, plants and water outside dwellings for such purposes as car, boat, or trailer washing or washing exterior of dwellings;
  - (b) Industrial uses of water, including but not limited to car wash operations and packing plant operations;
  - (c) Business use, other than industrial;
  - (d) Home uses other than those set forth in subsection (a).
- (Code 1990)
- 15-220. RIGHT OF ACCESS. Authorized employees of the city may enter upon any premises at reasonable hours for the purpose of reading the meter or servicing or inspecting meters or water lines. (Code 1990)
- 15-221 RATES. The rates per month for the use of water from the City waterwork system shall be as follows for customers within the City:
- 1. For the first 3,000 gallons purchased per month through any meter - \$10.00.
  - 2. For all water purchased above the first 3,000 gallons - \$4.10 per 1,000 gallons.
  - 3. For all water meters serving more than one dwelling unit, a multiple use metering charge shall apply. The multiple use metering charge shall be assigned to all apartment buildings, mobile home parks, senior housing, or special care facilities, dormitories and homes containing rented apartments or rooms occupied by someone other than the primary occupants of the residence. Multiple use metering charges shall be as follows:
    - a. Facilities with three or less multiple living units - \$13.75 per meter.
    - b. Facilities with more than three but less than ten multiple living units - \$37.50 per meter.
    - c. Facilities with ten or more multiple living units - \$60.00 per meter.
- (Ord. 110-2023-073, Sec. 1)

- 15-222. PAYMENT OF BILLS. All water bills for the previous month's water service shall be paid on or before the 12th day of the month following the service. For any billing not paid when due a late charge of 10 percent will be added to the bill. (Ord. 150-1984-011, Sec. 6; Ord. 110-1987-048, Sec. 3; Code 1990)
- 15-223. DELINQUENT ACCOUNTS; NOTICE; HEARING; FINDING; LIABILITY. Water service shall be terminated for nonpayment of service fees or charges as provided in sections 15-102:104. (Code 1990)
- 15-224. USE DURING FIRE. No person owning or occupying premises connected to the municipal water system shall use or allow to be used during a fire any water from the water system except for the purpose of extinguishing the fire. (Code 1990)
- 15-225. RURAL CUSTOMERS. Rates for the use of City water extended to rural water districts and other rural customers as follows:
1. Rural water districts and other rural customers will be billed a minimum charge of \$52.50 for the first 10,000 gallons purchased through any single or master meter.
  2. For all water purchased above the first 10,000 gallons a rate of \$4.75 per each 1,000 gallons will be charged.
- (Ord. 110-2023-073, Sec. 1)
- 15-226. SAME; PAYMENT OF ACCOUNTS. The monthly charges as set forth in section 15-225 above shall be payable on the 1st day of each month and shall be delinquent after the 12th day of each month. Accounts are payable at the office of the city clerk in the city building. (Ord. 110-1988-050, Sec. 2)
- 15-227. SAME; DISCONTINUANCE OF SERVICE FOR NONPAYMENT. An account which remains delinquent on the 15th day of each month shall be deemed in default and water service to such account shall be discontinued. No such discontinued service shall be restored unless the account is first paid in full, together with an additional meter deposit of \$10.00 and a reconnection fee of \$20.00. (Ord. 110-1988-050, Sec. 3; Code 2007)

### ARTICLE 3. SEWERS

15-301. DEFINITIONS. Unless the context clearly indicates otherwise, the meaning of words and terms as used in this article shall be as follows:

(a) ASTM - shall mean the American Society of Testing Materials or publications thereof.

(b) B.O.D. (denoting Biochemical Oxygen Demand) - shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees centigrade, expressed in milligrams per liter.

(c) Building Drain - shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.

(d) Building Sewer - shall mean the extension from the building drain to the public sewer or other place of disposal beginning two feet outside the inner face of the building wall.

(e) Capital Charge - shall mean that portion of the total wastewater service charge which is levied for local capital costs, local investment in plant facilities and other local costs excluding operation, maintenance and replacement costs.

(f) Combined Sewers - shall mean sewers receiving both surface runoff and sewage, are not permitted.

(g) Compatible Wastes - shall mean wastes containing pollutants for which the water pollution control plant was designed to treat and which are identified in the national pollutant discharge elimination system (NPDES) permit issued by the United States Environmental Protection Agency to the water pollution control plant of the city.

(h) Control Authority - shall mean the approval authority defined hereinabove; and/or the city utility superintendent, in a city pretreatment program approved under the provisions of 40 CFR 403.11.

(i) Cooling Water - shall mean water discharged from any system of air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

(j) Garbage - shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(k) Grab Sample - shall mean a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

(l) Health Officer - shall mean the person having public health responsibility by the State of Kansas and/or by Harvey County.

(m) Industrial Cost Recovery (ICR) - shall mean recovery by the governing body from the industrial users of a treatment works and collection system of the grant amount allocable to the treatment and collection of wastes from such users.

(n) Industrial Cost Recovery Period - shall mean the industrial cost recovery period equal to 20 years or to the period to which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such wastes.

(o) Industrial User - shall mean:

(A) Any nongovernmental, nonresidential user of a publicly owned treatment works which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

Division A. Agriculture, Forestry and Fishing.

Division B. Mining.

Division D. Manufacturing.

Division E. Transportation, Communications, Electric, Gas and Sanitary Services.

Division I. Services.

(1) In determining the amount of a user's discharge for purposes of ICR, domestic wastes or discharges from sanitary conveniences may be excluded.

(2) After applying the sanitary waste exclusion, discharges in the above divisions that have a volume exceeding 25,000 gpd or the weight of BOD or SS equivalent to that found in 25,000 gpd of sanitary waste are considered industrial users. Sanitary wastes, for purposes of this calculation of equivalency are wastes discharged from residential users.

(B) Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems or to injure or to interfere with any wastewater treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

(C) All commercial users of an individual system constructed with grant assistance.

(p) Industrial Wastes - shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

(q) Natural Outlet - shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

(r) Normal Domestic Wastewater - shall mean wastewater which the average concentration of suspended solids is established at 300 mg/1; the average concentration of five-day BOD is established at 250 mg/1; and the average concentration of oil and greases is established at 100 mg/1.

(s) PH - shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(t) Properly Shredded Garbage - shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

(u) Public Sewer - shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

(v) Replacement - shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(w) Sanitary Sewer - shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.

(x) Sewage - shall mean a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface, and storm waters as may be present.

(y) Sewage Treatment Plant - shall mean any arrangement of devices and structures used for treating sewage.

(z) Sewage Works - shall mean all facilities for collecting, pumping, treating and disposing of sewage.

(aa) Sewer - shall mean a pipe or conduit for carrying sewage.

(bb) Slug - shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24 hour concentration or flows during normal operation.

(cc) Storm Sewer or Storm Drain - shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

(dd) Storm Water - shall mean any surface water resulting from any form of natural precipitation which may or may not be mixed with an accumulation of dirt, soil and other debris or substances collected from the surfaces on which such precipitation falls or flows.

(ee) Superintendent - shall mean the utility superintendent of the city or his or her authorized deputy, agent or representative.

(ff) Suspended Solids - shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

(gg) Useful Life - shall mean the estimated period during which a sewage treatment plant will be operated; for the city the design life of 10 years shall be used.

(hh) User - shall mean a person or legal entity producing or causing to be produced wastewater requiring processing and treatment to remove pollutants and having premises connected to the wastewater collection and treatment system.

(ii) User Charge - shall mean that portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance, and replacement of the treatment and collection system.

(jj) Wastewater - shall mean sewage and the two terms may be interchanged without altering the meaning of either.

(kk) Wastewater Collection and Treatment System - shall mean a system including sanitary sewers, sewer mains, pump stations, processing and treatment facilities, holding ponds, etc. all used for the gathering, transporting and treating of wastewater prior to its re-entry into rivers, streams or other bodies of water.

(ll) Wastewater Treatment Facility - shall mean any devices and systems used in the storage, treatment, recycling and reclamation of municipal wastewater or industrial wastes of a liquid nature to implement section 201 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 96-500) and Pub. L. 93-243, or necessary to recycle or reuse water at the most economical cost of the useful life of the works, including intercepting sewers, outfall sewers, wastewater collection systems, pumping, power and other equipment and their appurtenances;

extensions, improvement, remodeling, additions, and alternations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear will facilities; and any works, including side acquisition of the land that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm runoff, or industrial waste, including waste in combined stormwater and sanitary sewer system.

(mm) Watercourse - shall mean a channel in which a flow of water occurs, either continuously or intermittently.  
(Ord. 100-1987-045, Art. I)

15-302. SEWER CONNECTION REQUIRED. The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a sanitary sewer of the city, is hereby required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public wastewater collection system in accordance with the provisions of this article and amendments thereto within 90 days after date of official notice to do so, provided that said public wastewater collection system is within 150 feet of the property line.  
(Ord. 100-1981-043, Art. II, Sec. 4)

15-303. PERMIT; FEE. (a) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city.

(b) There shall be two classes of building sewer permits for ICR purposes. The classification for sewer permits shall be either residential which shall encompass all buildings being used primarily for residential purposes and commercial which shall include all premises used for other than residential purposes.

(c) A permit and inspection fee of \$20.00 shall accompany each application to connect to the public sewer system at the time the application is filed with the city clerk:

The owner or his or her agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent.

(d) When no assessment has been made for the lateral sewer against the property to be connected to the City sewer, upon approval of the application for connection to the City, the assessment fee for allowing connection to the municipal sewer shall be designated by City staff in writing. The assessment fee shall be the pro rata cost as determined by taking the average of the three (3) most recent sewer utility projects within the City and applying to the applicant's property the same method of assessment, whether per lot or otherwise, said calculation to utilize the three (3) most recent project's total cost assessed in making the calculations.

(Ord. 100-1987-045, Art. IV, Secs. 1:2; Code 2007)

- 15-304. APPLICATION. Any person desiring to make a connection to the city sewer system shall apply in writing to the city clerk who shall forward the application to the utility superintendent. The application shall contain:
- (a) The legal description of the property to be connected;
  - (b) The name and address of the owner or owners of the property;
  - (c) The kind of property to be connected (residential, commercial or industrial);
  - (d) The point of proposed connection to the city sewer line.
- (Code 1990)
- 15-305. COSTS; FEES. All costs and expenses incident to the installation and connection of the building sewer shall be paid by the owner or contractor. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. 100-1981-043, Art. IV, Sec. 3)
- 15-306. SEWER CONNECTION. The connection of the building sewer into the public wastewater collection system shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the city before installation. (Ord. 100-1987-045, Art. IV, Sec. 9)
- 15-307. SAME; INSPECTION. The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the superintendent or his or her representative within 96 hours of the receipt of the notice. (Ord. 100-1981-043, Art. IV, Sec. 10)
- 15-308. SEWER FOR EACH BUILDING. A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway. In such case, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. (Ord. 100-1981-043, Art. IV, Sec. 4)
- 15-309. SAME. Whenever possible the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which the building drain is too low to permit gravity flow to the public wastewater collection system, wastewater carried by such building drain shall be lifted by an approved means and discharged to the building sewer. (Ord. 100-1981-043, Art. IV, Sec. 7)
- 15-310. SEWER EXCAVATIONS: DAMAGES. All excavations for building sewers shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city. (Ord. 100-1981-043, Art. IV, Sec. 11)



- 15-311. FAILURE TO CONNECT. (a) If any person as defined in section 1-102 shall fail, neglect or refuse to connect any dwelling or building with the sewer system for more than 10 days after being notified in writing by the governing body to do so, the city may cause such buildings to be connected with the sewer system as authorized by K.S.A. 12-631.  
(b) The cost and expense, including inspection fees, shall be assessed against the property. Until such assessments shall have been collected and paid to the city, the cost of making such connection may be paid from the general fund or through the issuance of no fund warrants.  
(Code 1990)
- 15-312. PRIVY UNLAWFUL. It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater. (Ord. 100-1981-043, Art. II, Sec. 3)
- 15-313. PRIVATE SEWER SYSTEM. Where a public sanitary sewer is not available under the provisions of section 15-302 the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article.  
(Ord. 100-1981-043, Art. III, Sec. 1)
- 15-314. SAME; PERMIT; FEE. Before commencing construction of a wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. The application shall be made on a form furnished by the city accompanied by any plans, specifications or other information deemed necessary by the superintendent. A permit and inspection fee of \$25.00 shall be paid to the city at the time the application is filed. (Ord. 100-1981-043, Art. III, Sec. 2)
- 15-315. SAME; INSPECTION. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction. The applicant for the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 96 hours of the receipt of the notice by the superintendent. (Ord. 100-1981-043, Art. III, Sec. 3)
- 15-316. SAME; DISCHARGE. (a) The type, capacities, location, and layout of the private wastewater disposal system shall comply with all recommendations of the Kansas Department of Health and Environment. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than 20,000 square feet. In the case of a private water supply, the minimum lot size shall be 40,000 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.  
(b) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 15-302, a direct connection shall be made to the public wastewater collection system within 60 days in compliance with this article, and any septic tank, cesspool, and similar private sewage disposal facilities shall be cleaned and filled with clean bank-run gravel, locally available chat or soil.  
(Ord. 100-1981-043, Art. III, Secs. 4:5,8; Code 1990)

(c) Properties zoned Agricultural or Residential Suburban with functioning septic tanks or lagoon systems shall be exempted from the requirement to connect to the public wastewater collection system until such time as the septic tank or lagoon no longer meets state or federal requirements. (Ord. 010-2009-181)

15-317. SAME; ADDITIONAL REQUIREMENTS. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer. (Ord. 100-1981-043, Art. III, Sec. 7)

15-318. SAME; MAINTENANCE. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city. (Ord. 100-1981-043, Art. III, Sec. 6)

15-319. DISPOSAL OF SEWAGE. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of the city, any human or animal excrement, garbage, or other objectionable waste. (Ord. 100-1981-043, Art. II, Sec. 1)

15-320. DAMAGE TO SEWERS. It shall be a misdemeanor for any unauthorized person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any sewer, structure, appurtenance, or equipment which is part of the municipal sewer system. (Ord. 100-1981-043, Art. VI; Code 1990)

15-321. NATURAL OUTLET. It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city any wastewater or other polluted waters except where suitable treatment has been provided in accordance with the provisions of this article. (Ord. 100-1981-043, Art. II, Sec. 2; Code 1990)

15-322. STANDARDS. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code as hereafter modified.

(a) Minimum internal pipeline diameter for all building sewers shall be four inches.

(b) Building sewers shall be constructed of one of the following pipeline materials:

(1) Extra-strength vitrified clay pipeline and fittings conforming to ASTM C 700.

(2) Polyvinyl chloride (PVC) gravity sewer pipe and fittings, Type PSP or PSM conforming to ASTM Standards D 3033 or D 3034. All PVC sewer pipe shall be at least Schedule 40.

(3) Cast or ductile iron pipe with a minimum pressure rating of 150 pounds per square inch conforming to Federal Specification WW-P421b, or ANSI A21.51, A21.6 or A21.8, except that iron used in the manufacture of pipe shall have minimum design strength value, in pounds per square inch, of 21,000 for bursting strength and 45,000 for modulus of rupture.

(Ord. 100-1981-043, Art. IV, Sec. 6)

- 15-323. OLD BUILDING SEWERS. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this article.  
(Ord. 100-1981-043, Art. IV, Sec. 5)
- 15-324. GREASE, OIL AND SAND TRAPS, BACKWATER VALVES REQUIRED.
- a. GREASE. OIL AND SAND TRAPS. Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.  
(Ord. 100-1981-043, Art. V, Sec. 6)
- b. BACKWATER VALVE. All new or remodeled residential structures, which require a permit, shall include the installation of an approved and listed backwater valve for all openings and fixtures located in basements or any occupied floor which has a finish floor height below the nearest manhole cover. Such valves shall be installed in accordance with the current adopted building code and the approved current plumbing methods. EXCEPTION: A basement which has a sewage ejection sump or system. (Ord. 100-2007-070, sec. 1)
- 15-325. ROOF, FOUNDATION DRAINS. It shall be unlawful to connect downspouts from any roof area, drains from any building foundation, paved areas, yards or open courts, or to discharge uncontaminated cooling water or unpolluted industrial process water into any public wastewater collection system.  
(Ord. 100-1981-043, Art. IV, Sec. 8, Art. V, Sec. 1; Code 1990)
- 15-326. STORM WATER; INDUSTRIAL COOLING WATER. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the superintendent. Such flow shall also be subject to federal and state regulation.  
(Ord. 100-1981-043, Art. V, Sec. 2)
- 15-327. PROHIBITED DISCHARGES. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
- (a) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
- (b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
- (c) Any waters or wastes having a PH lower than 6.0 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the treatment works.

(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the treatment works such as, but not limited to ashes, cinders, sand, mud, straw, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

(Ord. 100-1981-043, Art. V, Sec. 3)

15-328. SAME. No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the superintendent that such wastes can harm either the sewers, wastewater treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his or her opinion as to the acceptability of these wastes, the superintendent will give consideration to such facts as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the wastewater treatment process, capacity of the wastewater treatment plant and other pertinent facts. The substances prohibited are:

(a) Any liquid or vapor having a temperature higher than 120 degrees Fahrenheit (49 degrees Centigrade).

(b) Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg per liter or containing substances which may solidify or become viscous at temperatures between 32 degrees and 120 degrees Fahrenheit (0 degrees and 49 degrees Centigrade).

(c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of 3/4 horse-power (0.76 hp metric) or greater shall be subject to the review and approval of the superintendent.

(d) Any waters or wastes containing strong acid pickling wastes or concentrated plating solutions whether neutralized or not.

(e) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement to such degree that any such material received in the composite wastewater at the wastewater treatment works exceed the limits established by the superintendent for such materials or pretreatment requirements established by federal, state or other public agencies having jurisdiction over such discharges.

(f) Any water or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the superintendent as necessary, after treatment of the composite wastewater, to meet the requirements of state, federal or other public agencies of jurisdiction for such discharge.

(g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.

(h) Materials which exert or cause:

(1) Unusual concentrations of inert suspended solids (such as but not limited to Fullers earth, lime slurries and lime residues) or of dissolved solids (such as but not limited to sodium chloride, or sodium sulfate).

(2) Excessive discoloration (such as but not limited to, dye wastes and vegetable tanning solutions).

(3) Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment works.

(4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(l) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(j) Any waters or wastes having:

(1) A five-day BOD greater than 300 milligrams per liter;

(2) Containing more than 350 milligrams per liter of suspended solids; or

(3) Having an average daily flow greater than two percent of the average wastewater flow of the city, shall be subject to the review of the superintendent.

Where necessary in the opinion of the superintendent, the owner shall provide, at his or her expense, such preliminary treatment as may be necessary to

(1) Reduce the biochemical oxygen demand to 300 milligrams per liter;

(2) Reduce the suspended solids to 350 milligrams per liter; or

(3) Control the quantities and rates of discharge of such waters or wastes.

Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the superintendent. No construction of such facilities shall be commenced until the approvals are obtained in writing.

(Ord. 100-1981-043, Art. V, Sec. 4)

15-329.

SAME; EXCEPTION: PRETREATMENT. (a) If any waters or wastes are discharged or are proposed to be discharged to the public wastewater collection system, which waters contain the substances or possess the characteristics enumerated in section 15-328 of this article, and which in the judgment of the superintendent may have a deleterious effect upon the treatment works, processes, equipment, or receiving waters or which otherwise create a hazard to life to constitute a public nuisance, the superintendent may:

(1) Reject the wastes,

(2) Require pretreatment to an acceptable condition for discharge to the public sewers,

(3) Require control over the quantities and rates of discharge and/or,

(4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.

(b) If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent and subject to the requirements of all applicable codes, ordinances and laws.

(Ord. 100-1981-043, Art. V, Sec. 5)

- 15-330. PRELIMINARY TESTING. Where preliminary treatment or flow-equalizing facilities are provided for any water wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his or her expense. (Ord. 100-1981-043, Art. V, Sec. 7)
- 15-331. INDUSTRIAL WASTES; INSPECTION MANHOLE. When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. The manhole shall be accessibly and safely located. The manhole shall be installed by the owner at his or her expense in accordance with plans approved by the superintendent and shall be maintained by him or her so as to be safe and accessible at all times. (Ord. 100-1981-043, Art. V, Sec. 8; Code 1990)
- 15-332. SAME; TESTING. All measurements, tests, and analyses of the characteristics of waters and wastes shall be performed by a laboratory approved by the superintendent and shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at the control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the treatment works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a 24 hours composite of all building sewers of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all building sewers whereas pH's and heavy metals are determined from periodic grab samples.) (Ord. 100-1981-043, Art. V, Sec. 9)
- 15-333. SAME. Any pretreatment standards as established by state, federal, or other public agencies of jurisdiction for such discharge will be used as the minimum requirements by the superintendent as applied to this article. (Ord. 100-1981-043, Art. V, Sec. 10)
- 15-334. RIGHT OF ACCESS. The superintendent and authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. The superintendent or his or her representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment. Any report, record or information taken for purposes of administering this article shall remain confidential to the superintendent, except that such report, record or information

may be disclosed to other officials, employees or authorized representatives of the city and except for such effluent information as may be required by federal and state regulations. (Ord. 100-1981-043, Art. VII, Sec. 1)

15-336. SAME; EASEMENTS. The superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater collection system lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the duly negotiated easements pertaining to the private property involved. (Ord. 100-1981-043, Art. VII, Sec. 3)

15-336. SAME; SAFETY RULES; LIABILITY. While performing necessary work on private properties, the superintendent or authorized employees of the city shall observe all safety rules applicable to the premises established by the company. The company shall be held harmless for injury or death to the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 15-331. (Ord. 100-1981-043, Art. VII, Sec. 2)

15-337 INDUSTRIAL COST RECOVERY. (a) Any industrial user requesting sewer service after January 1, 1979 shall establish or cause to be established the quality, quantity and peak flow rate characteristics of the user's wastewater and shall present this information to the superintendent in such a manner that the superintendent shall determine if an industrial cost recovery (ICR) rate shall be established for the user. The cost of establishing these characteristics shall be paid by the user.

(b) Under the ICR program, any industrial user's share shall be based on all factors which significantly influence the cost of the wastewater collection and treatment system, such as quality, volume, and delivery flow rate characteristics which shall be considered and included to insure a proportional distribution of the grant assistance allocable to the industrial user's use, or capacity firmly committed for its use and shall not include an interest component. As a minimum, an industrial user's share shall be proportional to its flow in relation to the treatment works flow.

(c) Whenever current standards, regulations or guidelines are altered by any governmental agency in such a manner as to cause an expansion and/or upgrading of the treatment works which are not covered by user's fees, and require federal grant moneys, each industrial contributor's ICR fee will be adjusted in accordance with the current regulations to reflect the costs of expanding and/or upgrading the treatment works.

(Ord. 100-1981-043, Art. VIII)

15-338. USER CHARGES; PRIVATE WATER SOURCE. In the event a lot, parcel of land, premise or facility discharging wastewater, industrial process waste, water or

other liquids, either directly or indirectly into the city's wastewater collection and treatment system or which eventually enters the system, is supplied with water from any source other than from the city's water system, then the sewer user charge will be estimated at 100 gallons per capita per day, unless the owner of the lot, parcel of land, premise or facility installs, and maintains at his or her own expense, a water meter approved by the city's water department which shall serve as a control for the establishment of the sewer user charge and shall be accessible to the city's meter readers. (Ord. 100-1981-043, Art. IX, Sec. 1)



- 15-339. SAME; MULTIPLE METERS. Where more than one water meter is installed for service to one industry or commercial business located at a single site or adjoining sites, only one minimum monthly charge shall apply. The additional monthly charge shall apply to the total average winter water use from all meters which supply service to one industry or commercial business located at a single site or adjoining sites. (Ord. 100-1981-043, Art. IX, Sec. 2)
- 15-340. SAME; LEAKS. Where it can be established that a contributor has had a water leak during the establishment of the contributor's average winter water use, the contributor's charge may be adjusted by the cashier of the utility office by using the previous year's average winter water use or portion thereof. (Ord. 100-1981-043, Art. IX, Sec. 3)
- 15-341. SAME; PRORATED BASIS. If wastewater service is commenced or terminated during a period for which bills are rendered, billing shall be prorated on a daily basis. (Ord. 100-1981-043, Art. IX, Sec. 4)
- 15-342. SAME; OPERATION, MAINTENANCE AND REPLACEMENT. The city shall maintain at least two ledger accounts for user charge revenues as follows:  
(a) Operation and Maintenance Account. An account designated for the specific purpose of defraying operation and maintenance costs (excluding replacement) of the treatment works.  
(b) Replacement Account. An account designated for the specific purpose of ensuring replacement needs over the useful life of the treatment works as defined in section 15-301.  
(Ord. 100-1981-043, Art. IX, Secs. 5:6; Code 1990)
- 15-343. SAME; ACCOUNT. Monies which have been transferred from other sources to meet temporary shortages in the operation, maintenance and replacement fund shall be returned to their respective accounts upon appropriate adjustment of the user charge rates for operation, maintenance and replacement. The user charge rate(s) shall be adjusted such that the transferred monies will be returned to their respective accounts within the fiscal year following the fiscal year in which the monies were borrowed. (Ord. 100-1981-043, Art. IX, Sec. 6; Code 1990)
- 15-344. SAME; ADJUSTMENTS. Whenever current standards or guidelines are altered by any governmental agency in such a manner as to cause expansion and/or upgrading of the treatment works, user charges and ICR rates, if any, shall be adjusted in accordance with the current guidelines to reflect the costs of expanding and/or upgrading the treatment works.  
(Ord. 100-1981-043, Art. IX, Sec. 7)
- 15-345. SAME; CHARGES. (a) All users of the sewage system shall be billed at the same rate regardless of their usage. The difference in the amount collected will depend upon the volume of water used and the base period used to determine the monthly rates. Determination of which base is applied to any user shall be made by the governing body of the city.  
(b) For all residential, commercial, and certain industries, with demands similar to residences, the base period shall be December through March. All bills

from April through March shall be based on the average monthly usage during the preceding base period.

(c) For commercial and industrial users whose flow year round enters the sewer system the base period shall be the preceding month.

(d) Any user discharging a waste which increases any cost of collection or treatment shall pay the increased cost either as a surcharge included with the regular billing or by separate invoice at the option of the governing body. The basic formula for such a surcharge shall be:

$$\text{SUR} = \text{TC} (\text{Flow}/\text{TF} + \text{BOD}/\text{TB} + \text{TSS}/\text{TT})$$

Where:

SUR - Surcharge for the individual use (per year)

TC - Total cost of treatment (per year)

Flow - Flow of the individual user (gal./avg. day)

TF - Total flow at treatment facility (gal./avg. day)

BOD - Biochemical Oxygen Demand of the individual user (#/avg. day)

TB - Total BOD at treatment facility (#/avg. day)

TSS - Total Suspended Solids of the individual use (#/avg. day)

TT - Total TSS at the treatment facility (#/avg. day)

(e) Users wishing to appeal their user charge must request a hearing through the city clerk in writing.

(Ord. 100-1987-046, Sec. 2, 4:5)

15-346. RATES; REVENUES. The rates per month for the use of sanitary sewer service shall be as follows for customers within the City of Hesston:

1. The monthly charge for residential sanitary sewer service shall include a base rate of \$13.00 and a \$3.25 surcharge for each 1,000 gallons based upon the following:

The surcharge will be collected each month based on the water usage during the appropriate base period. For all the residential, commercial and certain industries with demands similar to residential usage, the base period shall be based on water consumption for the months of December, January, February and March with the highest usage month being eliminated from the averaging. All bills from May through April shall be based on the average monthly usage during the preceding base period.

2. For all sewer meters serving more than one dwelling unit, a multiple use metering charge shall apply. The multiple use metering charge shall be assigned to all apartment buildings, mobile home parks, senior housing, or special care facilities, dormitories and homes containing rented apartments or rooms occupied by someone other than the primary occupants of the residence. Multiple use metering charges shall be a fixed monthly charge per living unit of \$22.75.
3. For commercial and industrial users whose flow, year-round, enters the sanitary sewer system, the base period shall be determined by utilizing the preceding month's water consumption.

4. Determination of which base is applied to any user shall be made by the City Clerk.

(Ord. 100-2013-074)

15-347. RURAL SEWER DISTRICTS AND RURAL CUSTOMERS. Owners and members of a rural sewer district and other rural customers situated outside the city limits may be granted permission by contract, in the discretion of the governing body, to connect such premises to the city's sewage disposal system and discharge sewage from such premises as provided in this article.

(Ord. 100-1989-048, Sec. 1)

15-348. SAME; SEWER SERVICE FEES. Any contract, between the city and a rural sewer district or other rural customers shall require payment of sewer service use fees as established in section 15-349 and any subsequent use fees be less for outside city users than for city users. This section does not preclude the city from charging additional fees designed to cover capital costs or other nontreatment charge costs. (Ord. 100-1988-048, Sec. 2)

15-349. RURAL SEWER DISTRICTS AND RURAL SEWER CUSTOMERS. All rural sewer districts and other rural customers shall pay for sewer rates based on the volume of water used and the appropriate base period as hereby established:

1. The monthly charge for residential sanitary sewer service shall include a base rate of \$22.00 and a \$5.90 surcharge for each 1,000 gallons based upon the following:

For all residential, commercial and certain industries with demands similar to residential usage, the base period shall be December through March with the highest usage month being eliminated from the averaging. All bills from May through April shall be based on the average monthly usage for the preceding base period.

2. For commercial and industrial users whose flow year round enters the sanitary sewer system, the base period shall be determined by utilizing the preceding month's water usage.
3. Determination for the appropriate base period shall be made by the City Clerk.  
(Ord. 100-2013-074)

15-350. SAME; MAINTENANCE OF SYSTEM. Maintenance of the sanitary sewer system, if provided by the city, will be billed as follows:

(a) Sewer Line Maintenance: The extent of the sewer service line maintenance, if any, that will be performed by the city for the rural sewer district will be established by contract which shall be approved by the governing body. Any maintenance charges on sanitary sewer service lines under the contract between the city and rural sewer district and other rural customers shall be billed at the normal rate established by Resolution No. 683.

(b) Pump Station Maintenance: The extent of maintenance, if any, to be performed on any pump grinder, lift station, force main pump or any such

appurtenances shall be established by contract between the city and the rural sewer district and other rural customers. All charges for servicing, repairing or replacing such equipment shall be negotiated as part of the contract and shall allow the city to recover all costs associated with the maintenance.

(Ord. 100-1988-048, Sec. 4)

15-351. SAME; APPLICATION, PAYMENT. (a) Any rural sewer district or other rural customer desiring to make such sewer connection shall apply, in writing, to the city clerk for a permit to do so. Such application shall state:

- (1) The legal description of the premises;
- (2) The name of the owner or owners;
- (3) The number and kind of sewer intake openings to be connected;

- (4) The exact point of proposed connection; and
- (5) Proposed contract between the applicant and the city.

(b) The city clerk, upon receiving such application, if he or she finds the application to be in proper form and that the sewer to which applicant desires to connect is not overloaded and the sewage from such premises can be disposed of without additional expense to the city in excess of the service charges reasonably anticipated to be received from such premises that such sewer connection will be made without expenses to the city, may after review and approval of the governing body issue the applicant a permit to make such connection to the sewage disposal system as shown in the application or as the governing body may direct.

(c) The sewer service and maintenance charges imposed herein shall be payable to the city clerk.

(d) In the event of nonpayment of the sewer service charge, water service shall be discontinued, and before service shall be restored, the customer shall pay the bill and the further sum of \$35.00 for reconnection.

(Ord. 100-1988-048, Secs. 5:7)

15-352. AUDIT. The city shall annually, or as soon as possible, following the close of the fiscal year cause an audit to be made by a competent firm of certified public accountants experienced in public utility accounting of the accounts of the sewer system for the preceding fiscal year. Each audit, in addition to such matters as may be thought proper by the accountants, shall, without limiting the generality of the foregoing, include statements of gross revenues, operational expenditures, and net operational incomes and shall contain an operational balance sheet, a statement of the number of customers served, a statement of profit and loss, a statement of all bonds called or matured and all interest paid, a statement of the amount and character of insurance carried, and a statement and summary of the accountants' recommendations as to the city's practices and procedures of the sewer system operations. (Ord. 100-1987-046, Sec. 8)

15-353. BILLS; DELINQUENT ACCOUNTS. (a) Bills shall be rendered monthly as provided in section 15-226 and shall be collected as a combined utility bill. Delinquent solid waste bills shall carry the same due dates, grace periods and penalties as water bills.

(b) In the event any person, except the United States and the State of Kansas or any political subdivision thereof, shall fail to pay the user charges when

due, water service shall be terminated as provided in sections 15-102:104. Before service shall be restored, the customer shall be required to pay the delinquent bill, interest penalty thereon and a reconnection charge of \$20.00.

(c) In lieu of terminating water service, the governing body may elect to assess such delinquent charges as a lien upon the real estate serviced as provided in section 15-106, and the city clerk shall certify such delinquent charges to the county clerk to be placed on the tax roll and collected in like manner as other taxes are collected.

(Ord. 100-1987-046, Secs. 6:7; Code 2007)

15-354. CONNECTIONS OUTSIDE THE CITY. No sewer connection will be permitted in areas outside the city limits until the developer or owner obtains approval from the governing body. Any sewer lines needed to connect with existing city sewer mains and laterals shall conform to city and state specifications.

(Ord. 100-1981-043, Art. II, Sec. 5)

15-355. PENALTY. (a) Any person found to be violating any provision of this article except section 15-320 shall be served by the city with written notice stating the nature of the violation and giving 30 days for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(b) Any person charged with a violation of a provision of this article except section 15-320 shall correct or submit to the city a plan for satisfactory correction of the violation within 30 days of the receipt of notice of violation unless, due to the hazardous nature of the violation a shorter time is necessitated.

(c) Any person who shall continue any violation beyond the time limit provided for in subsection (a) shall be guilty of a misdemeanor, and on conviction thereof shall be fined in an amount not exceeding \$500.00 for each violation, or a jail sentence not exceeding 30 days, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person under this article, punishment shall be a fine not exceeding \$1,000.00 per day of such violation, together with imprisonment of not exceeding 90 days or by both such fine and imprisonment. Each day in which any such violation shall continue, shall be deemed a separate offense.

(d) The city shall cause the violation of any provision of this article except section 15-320, to be corrected, repaired, altered, or improved; and the costs thereof shall be charged to the person found to be violating this article and shall become a lien against the real property upon which such cost was incurred.

(e) The city may suspend for a reasonable time the wastewater treatment service and/or the wastewater or industrial wastewater discharge permits of the person violating any provision of this article in order to stop an actual or threatened discharge into the sanitary sewer system.

(f) Any person violating any of the provisions of this article shall become liable to the city for any expense, loss, or damage occasioned the city by reason of such violation, including such fines, penalties and other costs which may be assessed to the city for violation of wastewater treatment plant effluent requirements, where such violation is created by a user of the treatment works who, in turn, is in violation of city, state, or federal regulations.

(Ord. 100-1987-045, Art. X)

## ARTICLE 4. GAS

15-401. RATES. The rates per month for gas furnished by the city shall be as follows:

<u>Per Hour Meter Capacity</u>	<u>Minimum Rate per Month for Meter Service</u>
600 cu. ft. or less	\$ 9.00
601 cu. ft. to 900 cu. ft.	\$ 9.50
901 cu. ft. to 1500 cu. ft.	\$ 11.25
1501 cu. ft. to 2000 cu. ft.	\$ 15.75
2001 cu. ft. to 3000 cu. ft.	\$ 30.00
3001 cu. ft. to 6000 cu. ft.	\$ 52.50
6001 cu. ft. to 10000 cu. ft.	\$ 82.50

For each person, firm, company, corporation, or industry, the above listed minimums will be charged for the first 1,000 cubic feet (MCF) of gas metered to each installation. All metered gas above the first 1,000 cubic feet (MCF) shall be billed at \$8.45 per 1,000 cubic feet (MCF) or \$0.00845 per cubic foot, except as provided otherwise below.

- (b) For each heavy use industrial customer using gas in excess of 8,000 MCF per month, all metered gas above the first 1,000 cubic feet (MCF) shall be billed at \$7.65 per MCF. Heavy use industrial customers shall be determined annually by the City Administrator by totaling the monthly usage of all the meters serving a potential heavy use industrial customer for the prior year and dividing such usage by 12 (annual usage of all meters serving the customer divided by 12 months = the average monthly usage).
- (c) Gas rates for customers outside the corporate limits of the City are hereby set and provided for under Section 15-408 of this Article.
- (d) Gas rates for all customers may be subject to a fuel cost adjustment charge (FC) which may be applied when natural gas supply fuel cost increases are charged to the City by its natural gas suppliers. The amount of the fuel costs adjustment will be determined by the City Administrator.
- (e) In addition to the gas rates charged by the City to customers as established herein, the City shall charge all customers a \$1.90 surcharge per 1,000 cubic feet (MCF) of gas metered, effective as of the May 1, 2021 billing cycle, as the dedicated source of revenue established in Ordinance 150-2021-038 necessary for repayment of the City Utility Low-Interest Loan.

15-402. PAYMENT OF BILLS. (a) All gas accounts shall be due and payable at the office of the city clerk on the 1st day of each month for the preceding month. If the account is not paid on or before the 12th of the month, there shall be added a late payment charge of 10 percent.

(b) The city clerk, upon request, may waive the penalty if the customer has demonstrated prompt payment of his or her account over the prior six months period. (Ord. 150-1986-015, Secs. 2:3)

15-403. SECURITY DEPOSITS. (a) All non-owners of residential real estate (tenants of apartments, mobile home owners, and renters) shall be assessed a \$100.00 deposit.

(b) Security deposits for commercial and industrial accounts shall be established by the city clerk and shall be held as security for payment of all charges. Such security deposits may be set at any reasonable amount based on prior experience but shall not exceed \$5,000.00.

(c) In lieu of a cash security deposit the city clerk is authorized to accept surety bonds, with such sureties as are acceptable, payable to the city clerk, in an amount not less than the applicable cash security deposit established by the city clerk.

(d) Commercial and industrial security deposits may be refunded after five years of continual service if the account has been kept current and has not been assessed delinquent penalties for late payments.

(e) The city will pay at least the minimum rate of interest as established under the provisions of K.S.A. 12-822 to the customer on the security deposit at least once each year. Payment may be in the form of a credit to the customer account or actual cash or check refund as determined by the city clerk.  
(Ord. 150-1988-017, Sec. 1; Ord. 110-2011-072)

15-404. CONNECTION, RECONNECTION CHARGE. Whenever the city receives a request from a customer desiring a connection with the city gas system the customer shall be assessed a connection charge of \$20 before the meter is turned on. Any service disconnected for nonpayment of a delinquent bill shall be reconnected only upon payment of the delinquent bill, interest penalty thereon, a reconnection charge of \$20.00, and an additional meter deposit of \$20.00.  
(Ord. 150-1986-015, Sec. 5,7; Code 1990)

15-405. CITY TO MAKE CONNECTIONS; FEES. (a) All connections to the City's gas system shall be made by City employees only.

(b) The fee for connecting new meters to the City's gas system shall be the rate required to fully reimburse the City's actual cost of the specified meter and automatic meter reading appurtenances, plus applicable sales tax, plus the estimated hourly expense (at the rate of \$25.00 per hour) for connection to the City's gas system.

(c) The fee for installing yard lines shall be the greater of \$300 or the actual cost to the City for the installation.  
(Ordinance No. 020-2020-175)

15-406. METERS. All meters shall remain the property of the city and shall be maintained in good order by the city at no charge to the customer. (Ord. 150-1986-015, Sec. 6; Code 1990)

15-407. RURAL SERVICE AREA. (a) Service for gas shall be extended to rural customers located within a three mile radius of the corporate boundaries of the city. Service to rural customers shall be at the discretion of the governing body and may be denied, discontinued or curtailed should the city determine gas supplies are inadequate to meet the demands of both city and rural customers.

(b) It shall be the responsibility of rural customers to maintain such taps, connections and service lines. The city shall not extend its gas mains to a rural area solely for the purpose of providing as to rural customers. (Ord. 150-1988-018, Sec. 1)

15-408. RATES. Rates for the use of city gas shall be extended to rural customers as follows:

<u>(a) Per Hour Meter Capacity</u>	<u>Minimum Rate per Month for Meter Service</u>
600 cu. ft. or less	\$ 13.00
601 cu. ft. to 900 cu. ft.	\$ 14.25
901 cu. ft. to 1500 cu. ft.	\$ 16.75
1501 cu. ft. to 2000 cu. ft.	\$ 23.65
2001 cu. ft. to 3000 cu. ft.	\$ 45.00
3001 cu. ft. to 6000 cu. ft.	\$ 78.75
6001 cu. ft. to 10000 cu. ft.	\$ 123.75

For each month the above listed minimums will be charged for the first 1,000 cubic feet (MCF) of gas metered to each rural installation. All metered gas above the first 1,000 cubic feet (MCF) shall be \$12.175 per 1,000 cubic feet (MCF).

(b) Gas rates for all customers may be subject to a fuel cost adjustment charge (FC) which may be applied when natural gas supply fuel cost increases are charged to the City by its natural gas suppliers. The amount of the fuel costs adjustment will be determined by the City Administrator.

(c) In addition to the gas rates charged by the City to rural customers established herein, the City shall charge all rural customers a \$1.90 surcharge per 1,000 cubic feet (MCF) of gas metered, effective as of the May 1, 2021 billing cycle, as the dedicated source of revenue established in Ordinance 150-2021-038 necessary for repayment of the City Utility Low-Interest Loan. (Ordinance No. 150-2021-039)

15-409. SAME; FEES AND CHARGES. The monthly charges as set forth in section 15-408 above shall be payable on or before the 12th day of each month at the office of the city clerk. (Ord. 150-1988-018, Sec. 3)

15-410. SAME; SECURITY DEPOSITS. (a) Initial security deposits for any new rural residential account may be assessed in the amount of \$100.00 which shall be held by the city as security for payment of all charges. After two years of continual



residential service, if an account has been kept current with no late payments, the security deposit may be refunded at the discretion of the city clerk.

(b) It is the intent of the governing body that all non-owners of residential real estate (tenants of apartments, mobile home owners, and renters) should be assessed a \$100 deposit.

(c) Security deposits for commercial and industrial accounts shall be established by the city clerk and shall be held as security payment of all charges. Such security deposits may be set at any reasonable amount but shall not exceed \$5,000.

(d) In lieu of a cash security deposit, the city clerk is authorized to accept surety bonds, with such sureties as are acceptable, payable to the city clerk, in an amount not less than the applicable cash security deposit established by the city clerk.

(e) Commercial and industrial security deposit shall be refunded after seven years of continual service if the account has been kept current and has not been assessed delinquent penalties for late payments.

(f) The city will pay at least the minimum rate of interest as established under provisions of K.S.A. 12-822 to the customer on the security deposit at least once each year. Payment may be in the form of a credit to the customer account or actual cash or check refund as determined by the city clerk.

(Ord. 150-1988-018, Sec. 4)

15-411. SAME; CONNECTION OR RECONNECTION CHARGE. All rural customers connected to the city's gas system shall be assessed a hookup charge of \$30.00 prior to their meter being turned on by the city. Such hookup charge is a fee assessed by the city which will not be returned to the customer.

(Ord. 150-1988-018, Sec. 5)

15-412. SAME; METER INSTALLATION FEE. All meters requested for installation by rural customers shall be the property of the city. A meter installation and maintenance payment of \$300 is required before a meter will be set.

(Ord. 150-1988-018, Sec. 6)

15-413. SAME; DELINQUENCY. An account not paid in full on or before the date stated above shall become delinquent and shall be charged with a delinquency charge of 10 percent of the net amount of the account before sales tax.

(Ord. 150-1988-018, Sec. 7)

15-414. SAME; DISCONTINUANCE OF SERVICE. Discontinuance of service for nonpayment shall occur when an account remains delinquent 25 days after the due date. No such discontinued service shall be restored unless the account is first paid in full together with an additional reconnection charge of \$30.00 and an additional meter deposit of \$30.00 or such larger amount as the city clerk may determine. (Ord. 150-1988-018, Sec. 8)

15-415. INSPECTION. The city recognizes its obligation to inspect pipelines that convey natural gas from a gas main to the outside wall of residential premises which are individually metered and directly served by the city. Such inspection is required by state and federal laws and regulations. (Ord. 150-1989-020, Sec. 1)

- 15-416. MAINTENANCE. As provided by state regulations, the city will maintain all gas distribution pipelines (mains), meters, and service lines from the transmission pipelines to the meter. (Ord. 150-2001-033, Sec. 1; Code 2003)
- 15-417. YARD LINES. All gas lines between the meter and the outside wall of any residential structure shall hereby be designated yard lines and the maintenance and repair of such lines shall be the responsibility of the property owner. (Ord. 150-1989-020, Sec. 3)
- 15-418. INSPECTION AND DISCONTINUANCE. The city shall have the authority to discontinue gas service to any residence or business if so necessitated by leakage or unsafe conditions on a yard line and shall have the right to inspect yard lines to ensure the safe conditions of the lines. (Ord. 150-1989-020, Sec. 4)
- 15-419. OWNERSHIP OF LINES. Nothing in this article shall be interpreted to transfer the ownership and/or responsibility for maintenance or repair of any yard line or in-house residential line. (Ord. 150-1989-020, Sec. 5)
- 15-420. TESTING STANDARDS. The city recognizes its obligation to ensure the safety of its citizens and gas utility customers. Therefore, in accordance with current gas safety practices the city hereby establishes material and testing standards for all gas yard lines in the city. (Ord. 150-1989-021, Sec. 1)
- 15-421. YARD LINES DEFINED. For purposes of this article yard lines shall mean all natural gas customer transmission lines between the gas meter and the outside foundation wall of the customer's residence or business. Yard lines shall not include any gas piping located in the interior structure of the customer's residence or business. (Ord. 150-1989-021, Sec. 2)
- 15-422. RESPONSIBILITY FOR YARD LINES. The maintenance and repair of leakage, damage, breakage or other unsafe situations shall be performed at the expense of the property owner using materials approved by the city. (Ord. 150-2001-033, Sec. 1; Code 2003)
- 15-423. INSTALLATION AND REPAIR OF YARD LINES. All repairs, maintenance, installation or replacement of gas yard lines in the city shall be performed by city employees or designees. (Ord. 150-2001-033, Sec. 1; Code 2003)
- 15-424. YARD LINE REPLACEMENT AND NEW INSTALLATIONS. All gas yard line piping in the city at the time of replacement because of leakage or at the time of installation of a new yard line shall be constructed of materials as stated in section 15-425 of this article. Materials deviating from these standards may not be installed without written authorization from the gas utility superintendent, building inspector and city administrator. (Ord. 150-1989-021, Sec. 5)
- 15-425. YARD LINE REPLACEMENT AND NEW INSTALLATION; ALLOWABLE MATERIALS. Materials used in replacement or installation of new gas yard lines

in the city are hereby required to be thermoplastic pipe/tubing meeting the following standards:

- (a) Plastic piping/tubing must be polyethylene plastic pipe marked with the ASTM D2513 standard marking;
- (b) Plastic piping/tubing must carry PE pipe designations PE 2306, PE 3306, PE3406 or PE 3408;
- (c) Plastic piping/tubing must have an odorless risers at both ends;
- (d) Plastic piping/tubing must be approved by the building inspector prior to installation.

(Ord. 150-1989-021, Sec. 6)

15-426. INSTALLATION. (a) all gas yard lines must be buried at a minimum depth of 24 inches below the ground surface. Backfill material should be free of rocks or debris which may damage or puncture the line. An electrical conductive wire or other means of locating the buried pipe must be installed at the time of burial.

(b) The installation of a replacement gas yard line by means of insertion into an old steel line is permissible if done in compliance with existing state and local safety regulations.

(c) No plastic gas yard line installed under this article shall be allowed above ground nor allowed to support an external load.

(Ord. 150-1989-021, Sec. 7)

15-427. INSPECTION AND TESTING. All gas yard lines in the city must be tested and inspected by the city. A pressure test of the gas yard line replacements or new installations must be conducted according to federal and state pipe safety regulations. The plastic piping/tubing shall be tested at a pressure of 20 psig for a period not less than 60 minutes. The building inspector shall inspect the pressure test to insure compliance with all applicable standards and must inspect the line prior to being covered by fill material. (Ord. 150-1989-021, Sec. 8)

15-428. INSPECTION AND ACCESS. The city shall continue the inspection of pipelines that convey gas from a gas main to the outside wall of residential premises which are individually metered and directly served by the city gas utility, as required by state and federal laws and regulations, and shall have access rights to carry out such responsibility. (C.O. No. 140-1989-008, Sec. 2)

15-429. COSTS TO OWNERS. It is the judgment of the governing body that the public safety of areas served by the city gas utility, and the cost of gas service provided by the city, will be best served by providing inspections as required under section 15-428, but requiring the cost of repairs to privately owned gas pipelines to be paid by the owner. The governing body has provided the means and standards for repairing gas pipelines. (C.O. No. 140-1989-008, Sec. 3)

15-430. ANTI-DRUG PROGRAM ESTABLISHED. The city, being subject to the jurisdiction of KDOT which regulates and requires operators of gas utilities to test employees of the systems for the presence of prohibited drugs and provide an Employee Assistance Program, does hereby establish an anti-drug program for all employees of the gas utility and for such other persons involved with the gas utility program who shall be designated as "covered employees" by the city administrator.

The anti-drug program will meet all requirements of federal and state regulatory agencies for drug testing, monitoring and follow-up as outlined in United States Department of Transportation Regulations at 49 CFR Parts 192, 193, or 195, pursuant to and in accordance with 49 CFT Parts 199 and 40 and amendments thereof. (Ord. 150-1990-024, Sec. 1)

15-431. TYPES OF DRUG TESTING. Employees subject to this drug testing program are required to be tested under the following types of test:

(a) Pre-Employment Testing:

(1) A pre-employment drug test will be conducted when an individual is hired for a position.

(2) A pre-employment drug test will be conducted when a current employee transfers from a position not covered into a covered position. An employee who previously is separated from a Part 199 anti-drug program position will be pre-employment tested prior to performing a function covered by the pipeline safety standards.

(3) Only applicants who are offered a covered position will be tested before being employed. Pre-employment job applicants who test positive will not be hired and do not have the right to have their samples retested. Employees transferring into a position requiring drug testing who test positive do have the right to have their sample retested. Employees who fail a drug test will not be hired for the position requiring drug testing. If applicant's drug test is positive, then the city will refer to the MRO review (see Section 4 -Medical Review Officer).

(4) An employee who transfers from one covered position to another covered position does not require pre-employment testing.

(5) Employees working in a covered position on the effective date and continues to work in a covered position do not require a pre-employment test.

(b) Random Testing:

(1) All employees working in a covered position are subject to unannounced testing based on random selection. This includes temporary employees performing work in a covered position.

(2) The operator will test at least 50 percent of covered employees every 12 months, divided on the bases set forth in paragraph six below. All persons will be subject to be randomly picked for drug testing at each random testing date. A person may be randomly picked more than once or not picked more than once or not picked at all during the annual period. (NOTE: During the first 12 months of the program, at least 25 percent of the covered employees will be tested, with the final collection in the first year meeting the 50 percent annualized rate.)

(3) To assure the selection process is random, all covered employees will be placed in a common pool. All full-time and temporary employees will be in this pool.

(4) The random computer selection procedure will be used.

(5) The selection procedure will select sufficient additional numbers to be used to reach the appropriate testing level during each test period. These alternate numbers will be tested in order of selection only if persons selected are unavailable for testing due to vacations, medical leave, or travel requirements.

(6) Random testing will be done on a quarterly basis.

(c) Post-Accident Testing:

(1) Employees working in covered positions whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident will be tested.

(2) The employee will be tested as soon as possible, but not later than 32 hours after the accident. Because certain drugs or drug metabolites do not remain in the body for extended periods of time, testing should be as soon as possible.

(3) All reasonable steps will be taken to obtain a urine sample from an employee after an accident. In case of a conscious but hospitalized employee, the hospital or medical facility will be requested to obtain a sample and, if necessary, reference will be made to the DOT drug testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the medical facility shall collect the sample.

(4) If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional) and refuses to be tested, that employee will be removed from duty as a covered employee.

(d) Reasonable Cause Testing:

(1) When there is reasonable cause to believe that a covered employee is using a prohibited drug, the employee will be required to take a drug test.

(2) (a) 50 or Fewer Employees - Only one supervisor of the employee must substantiate the decision to test for reasonable cause. This supervisor must be EAP trained in drug use symptoms.

(3) A decision to test must be based on specific contemporaneous physical, behavioral, or performance indicators of probable drug use. Examples of this are evidence of repeated errors on-the-job, regulatory or city rule violations, or unsatisfactory time and attendance patterns, coupled with a specific contemporaneous event that indicated probable drug use.

(4) Testing under 49 CFR, Part 199 is limited to marijuana, cocaine, opiates, amphetamines, and PCP.  
(Ord. 150-1990-024, Sec. 1)

15-432. TESTING PROCEDURES. (a) Drug testing will be performed utilizing urine samples.

(b) Tests for marijuana, cocaine, opiates, amphetamines and phencyclidine will be performed.

(c) An applicant who is offered a covered position will be required to report to the drug testing collection site specified in Section 6 within 48 hours of notification and provide a specimen of his or her urine.

(d) Upon notification that a drug test is required, an employee will report as soon as possible but not later than 24 hours (32 hours for post-accident) after notification to the drug collection site and provide a specimen of his or her urine.

(e) The collection agency shall adhere to all requirements outlined in 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Program.  
(Ord. 150-1990-024, Sec. 1)

15-433. MEDICAL REVIEW OFFICER (MRO). (a) The MRO is a doctor of medicine, knowledgeable in drug abuse disorders.

(b) The following is a list of the MRO's specific responsibilities:

(1) Receive positive confirmed results from laboratory.

(2) Request, if needed, a quantitative description of test results.

- (3) Receive a certified copy of the original chain-of-custody.
  - (4) Review and interpret positive test results.
  - (5) Inform the tested individual and provide test results.
  - (6) Conduct a medical interview with the tested individual by telephone.
  - (7) Review the individuals medical history or any other relevant biomedical factors.
  - (8) Give the individual an opportunity to discuss the test results.
  - (9) Order a reanalysis of the original sample in a certified laboratory, if necessary.
  - (10) Consult with others if questions of accuracy arises. Consistent with Part 9 - confidentiality.
  - (11) Consult with laboratory officials.
  - (12) Not receive urinalysis results that do not comply with the mandatory guidelines.
  - (13) Not declare as positive an opiate-positive urine without "clinical evidence."
  - (14) Determine whether a result is scientifically sufficient.
  - (15) Determine whether a result is consistent with legal drug use.
  - (16) Forward results of verified positive test results to management officials.
  - (17) Maintain the required records to administer this program.
- For additional details of responsibilities see the U.S. Department of Health and Human Services (DHHS) Medical Review Officer Manual.  
(Ord. 150-1990-024, Sec. 1)

15-434. TESTING LABORATORY. (a) The testing laboratory is a NIDA/CAP certified laboratory.  
(b) The testing laboratory will comply with all methods and procedures of 49 CFR Part 40 and will provide annual reports showing compliance.  
(Ord. 150-1990-024, Sec. 1)

15-435. COLLECTION AGENCY. (a) The collection agency is a local doctor or clinic for the drug screen procedure to perform the specimen collection along with the test kit, and chain-of-custody. A separate chain-of-custody will be completed for each specimen collected.  
(b) The collection agency will comply with all methods and procedures of 49 CFR Part 40 and will provide annual reports showing compliance.  
(Ord. 150-1990-024, Sec. 1)

15-436. EMPLOYEE ASSISTANCE PROGRAM (EAP). (a) Education - Every covered employee will receive the following drug use education:  
(1) Drug information will be periodically distributed and displayed in the work area.  
(2) A copy of the policy will be given to each employee and displayed in the work area.  
(3) The hot line telephone number for employee assistance will be given to each employee and displayed in the work area.  
(b) Training - Every supervisor covered will determine whether an employee must be drug tested based on reasonable cause who will receive the following drug use training:

(1) A one hour (minimum) training period on the specific contemporaneous physical, behavioral, and performance indicators of possible drug use.

(2) The training specialist for this program has completed the EAP training course.

(Ord. 150-1990-024, Sec. 1)

15-437. RECORDKEEPING. (a) The city will keep the following records for the periods specified:

(1) Records that demonstrate the collection process conforms to Part 199 will be kept for a minimum of three years.

(2) Records of employee drug test results that show employee failed a drug test, and the type of test failed and records that demonstrate rehabilitation, if any, will be kept for a minimum of five years, and include the following information:

(i) The functions performed by each employee who fails the drug test.

(ii) The prohibited drugs which were used by each employee who fails the drug test.

(iii) The disposition of each employee who fails the drug test (e.g., termination, rehabilitation, leave without pay, etc.).

(iv) The age of each employee who fails the drug test.

(3) Records of employees drug test results that show employees passed a drug test will be kept for a minimum of one year.

(4) A record of the number of employees tested by type of test will be kept for a minimum of five years.

(5) Records confirming that supervisors and employees have been trained as required will be kept for a minimum of three years. Training records will include copies of all training materials.

(Ord. 150-1990-024, Sec. 1)

15-438. CONFIDENTIALITY. (a) Each individual's record of testing and results will be maintained private and confidential. With the exception of the testing laboratory, MRO, designated personnel manager or upon request of RSPA or State Agency Officials as part of an accident investigation, the results of individual drug tests will not be released to anyone without the expressed written authorization of the individual tested. Prior to testing, the individual will be informed about who will receive test date (e.g., testing laboratory, MRO, personnel manager).

(b) All written records will be stored in locked containers or in a secure location with access available only by the individuals listed above.

(Ord. 150-1990-024, Sec. 1)

## ARTICLE 5. SOLID WASTE

15-501. DEFINITIONS. Unless the context clearly indicates otherwise, the meaning of words and terms as used in this article shall be as follows:

(a) Bundle. - A package containing rubbish only, not exceeding four feet in its longest dimension and of sufficient strength to permit lifting and carrying of the full weight thereof without spilling or leakage and placed for collection immediately adjacent to the standard container.

(b) Commercial Waste. - All refuse emanating from establishments engaged in business including, but not limited to stores, markets, office buildings, restaurants, shopping centers, theaters, hospitals, governments and nursing homes.

(c) Dwelling Unit. - Any enclosure, building or portion thereof occupied by one or more persons for and as living quarters.

(d) Garbage. - The putrescible animal and vegetable waste that attend the use and preparation of meat, fish, fowl, fruits, or vegetables and tin cans or containers originally used for food stuffs.

(e) Hazardous Wastes. - Includes paints, solvents, oils, petroleum products, insecticides, pesticides or any substances listed as environmentally hazardous under current and future Environmental Protection Agency rules and regulations.

(f) Multi-Family Unit. - Any structure containing more than four individual dwelling units;

(g) Persons. - Any person, firm, partnership, association, corporation, company or organization of any kind.

(h) Recyclables. - Includes newsprint, glass, plastics, aluminum and tin cans and other like waste materials which are readily recycled.

(i) Refuse. - All garbage, rubbish and trash but shall not include recyclables, yard wastes or hazardous materials.

(j) Residential Unit. - A room or group of rooms within a building or structure and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating. A sleeping room only is not a residential unit.

(k) Rubbish. - The nonputrescible waste consisting of miscellaneous materials including but not limited to paper, broken crockery, fabrics, coffee grounds, utensils, pliable cartons and boxes, excelsior packing, sweeping of dust and dirt and similar materials.

(l) Solid Waste - All non-liquid garbage or rubbish and trash.

(m) Standard containers. - Plastic or galvanized metal containers, water tight, with tight fitting covers, approximately 32 gallons or less in capacity, with cover handle and side bails and not exceeding a weight of 75 pounds when full or plastic refuse bags being of a size comparable to the plastic or metal containers.

(n) Trash. - All other putrescible and non-putrescible waste, except body waste, including but not limited to wood, non-pliable cratings, boxes or cartons, wood shavings, metal shavings, solid combustible materials and similar materials, but shall not include any excavation or building materials and other wastes from any construction project.



(o) Yard Wastes. - Grass trimmings, leaves, shrubbery, tree trimmings and similar materials which are banned from the Harvey County landfill.  
(Ord. 080-1993-011, Sec. 1; Ord. 080-1993-011, Sec. 1)

15-502. COLLECTION. All solid waste accumulated within the city shall be collected, conveyed and disposed of by the city or by contractors specifically authorized to collect and dispose of solid waste or by persons authorized to dispose of their own refuse and garbage. (Ord. 080-1982-002, Sec. 2; Code 1990)

15-503. CONTRACTS. The city shall have the right to enter into a contract with any responsible person for collection and disposal of solid waste.  
(Ord. 080-1982-002, Sec. 3; Code 1990)

15-504. DUTY OF OWNER, OCCUPANT. The owner or occupant of every dwelling unit or commercial enterprise shall use containers provided by the city authorized contractor for the storage of solid waste as provided in this article. No owner or occupant shall permit to accumulate quantities of refuse or other waste materials within or close to any structure within the city unless the same is stored in approved containers and in such a manner as not to create a health or fire hazard.  
(Ord. 080-1982-002, Sec. 4; Code 1990)

15-505. CONTAINERS. (a) Plastic bags manufactured for garbage and refuse disposal that are available for purchase from the city authorized contractor may be substituted for residential containers. Plastic bags, when used, shall be securely closed. All garbage shall be drained of all liquids before being placed in bags or containers.

(b) Boxes, books, magazines, or other such paper products which are not readily recyclable must be placed in containers or bags supplied by the city authorized contractor.

(c) Tree limbs, brush and grass clippings shall not be deposited in containers or bundles for collection. The materials are yard wastes and must be disposed of according to section 15-510A.  
(Ord. 080-1993-011, Sec. 1; Code 2007)

15-506. BULK CONTAINERS. On premises where excessive amounts of refuse accumulates or where cans or bags are impractical bulk containers for the storage of refuse may be used. Containers shall have a capacity and shall be equipped with appurtenances for attaching mechanical lifting devices which are compatible with the collection equipment being used. Containers shall be constructed of durable rust and corrosion resistant material which is easy to clean. All containers shall be equipped with tight fitting lids or doors to prevent entrance of insects or rodents and shall be kept closed at all times except when depositing materials in the container or removing the contents thereof. Doors and lids shall be constructed and maintained so they can be easily opened. Containers shall be watertight, leakproof and weather proof construction.  
(Ord. 080-1982-002, Sec. 4; Code 1990)

15-507. LOCATION OF CONTAINERS. Containers shall be placed and maintained as follows:

(a) On the day designated for collection service in the residential areas, all approved bags or containers shall be placed by the occupant at the side of the curb in the front of the residential unit. At all other times the containers shall be placed and kept by the occupant at a suitable place on the premises.

(b) All containers or enclosures in the commercial and industrial area shall be kept or placed at a suitable on-premises location.

(Ord. 080-1982-002, Sec. 5; Code 2007)

15-508. OWNERSHIP OF SOLID WASTE. Ownership of solid waste when placed in containers by the occupants or owners of premises upon which refuse accumulates, shall be vested in the city and thereafter shall be subject to the exclusive control of the city, its employees or contractors. No person shall meddle with refuse containers or in anyway pilfer or scatter contents thereof in any alley or street within the city. (Ord. 080-1982-002, Sec. 7(f); Code 1990)

15-509. WRAPPING GARBAGE. All garbage shall be drained of all excess liquid, and wrapped in paper or other disposable container before being placed in solid waste containers. (Ord. 080-1982-002, Sec. 5; Code 1990)

15-510A. YARD WASTE DISPOSAL. No person shall deposit in a solid waste container or otherwise offer for collection any yard wastes. The proper disposal of yard wastes shall be the sole responsibility of the occupant but nothing within this article shall limit a contractor's ability to collect and properly dispose of yard wastes for an additional charge to the occupant. (Ord. 080-1993-011, Sec. 1)

15-510. HEAVY, BULKY WASTE. Heavy accumulations such as brush, tree limbs, broken concrete, sand or gravel, automobile frames, dead trees, and other bulky, heavy materials shall be disposed of at the expense of the owner or person controlling same. (Ord. 080-1982-002, Sec. 11; Code 1990)

15-511. HAZARDOUS MATERIALS. No person shall deposit in a solid waste container or otherwise offer for collection any hazardous garbage, refuse, or waste. Hazardous material shall include:

- (a) Explosive materials;
- (b) Rags or other waste soaked in volatile and flammable materials;
- (c) Chemicals;
- (d) Poisons;
- (e) Radio-active materials;
- (f) Highly combustible materials;
- (g) Soiled dressings, clothing, bedding and/or other wastes, contaminated by infection or contagious disease;

(h) Any other materials which may present a special hazard to collection or disposal personnel, equipment, or to the public.

(Ord. 080-1982-002, Sec. 7(e); Code 1990)

15-512. PROHIBITED PRACTICES. It shall be unlawful for any person to:

- (a) Deposit solid waste in any container other than that owned or leased by him or under his control without written consent of the owner and/or with the intent of avoiding payment of the refuse service charge;

(b) Interfere in any manner with employees of the city or its contractors in the collection of solid waste;

(c) Burn solid waste except in an approved incinerator and unless a variance has been granted and a written permit obtained from the city or the appropriate air pollution control agency;

(d) Bury refuse at any place within the city except that lawn and garden trimmings may be composted.

(e) Permit to accumulate on any premises, improved or vacant, or on any public place in the city, such quantities of garbage or refuse either in containers or not that shall in the opinion of the health officer constitute a health or sanitary hazard;

(f) Permit to accumulate quantities of refuse, paper, trash, ashes or other waste materials within or close to any building in the city unless the same is stored in containers in such manner as not to create a health or fire hazard;

(g) No person shall upset, turn over, remove or carry away any container or mutilate or damage such container in any manner.

(Ord. 080-1982-002, Sec. 7; Code 1990)

15-513. OBJECTIONABLE WASTE. Manure from cow lots, stables, poultry yards, pigeon lofts and other animal or fowl pens, and waste oils from garages or filling stations shall be removed and disposed of at the expense of the person controlling the same and in a manner consistent with this article. (Code 1990)

15-514. UNAUTHORIZED DISPOSAL. No person shall haul or cause to be hauled any garbage, refuse or other waste material of any kind to any place, site or area within or without the limits of the city unless such site is a sanitary landfill, transfer point, burn site or disposal facility approved for such materials by the Kansas State Department of Health and Environment. (Ord. 080-2005-026, Sec. 1; Code 2007)

15-515. PRIVATE COLLECTORS; LICENSE REQUIRED. (a) It shall be unlawful for any person, except an employee of the city or contractor specifically authorized for that purpose, to collect or transport any solid waste within the city, without securing a license from the city.

(b) Nothing herein shall be construed to prevent a person from hauling or disposing of his or her own solid waste provided he or she obtains a valid private collectors license issued by the city.

(Ord. 080-1982-002, Sec. 10; Code 1990)

15-516. SAME; APPLICATION. Any person desiring to collect or transport solid waste within the city shall make application for a license to the city clerk. The application shall set forth the name and address of the applicant, the make and type of vehicle to be operated for collecting and transporting solid waste. The application shall be accompanied by a certificate of inspection and approval of said vehicle by the county health officer issued not more than 15 days prior to the date of application. (Ord. 080-1982-002, Sec. 10; Code 1990)

15-517. SAME; FEE. No license shall be issued unless the applicant shall pay to the city clerk the sum of \$100.00 per annum for each vehicle used in the collection and transportation of solid waste. The permit shall be effective only for the calendar

year and shall expire on December 31st of the calendar year in which said permit is issued. (Ord. 080-1993-011, Sec. 1; Code 1990)

15-518. SAME; INSURANCE. The applicant shall provide a certificate of public liability insurance in the amount of \$100,000 for any one person, \$300,000 for more than one person, and \$100,000 property damage on each vehicle to be used in such service. Such policies of insurance shall be issued by some insurance company authorized to do business in the State of Kansas. A private collector may qualify as to the insurance requirements by filing a certificate with the city clerk executed by the resident agent of such company stating that the required policy of insurance has been issued by such company for the purpose required by this article and that such insurer will not cancel the policy except upon giving 30 days notice in writing to the city; and that the certificate shall be filed for an annual period beginning January 1 and ending December 31 of each year. (Ord. 080-1982-002, Sec. 100; Code 1990)

15-519. SAME; NUMBER TO BE DISPLAYED. The city clerk shall issue a license receipt together with a number, which shall be painted on each vehicle. Said number shall be conspicuously placed upon the vehicle in a place and position to be clearly visible and in a condition to be clearly legible. The number shall be used only on the vehicle for which it is issued. (Code 1990)

15-520. CLOSED VEHICLE. Any vehicle used by any person for the collection and transportation of solid waste shall be maintained in a good mechanical condition. Vehicle shall be equipped with an enclosed covered body to prevent the contents leaking or escaping therefrom. Only tree trimmings or brush may be transported in open-bodied vehicles provided the material is securely tied in place to prevent scattering along the streets and alleys. (Ord. 080-1982-002, Sec. 2; Code 1990)

15-521. RULES AND REGULATIONS. The collection and transportation of trash and waste materials shall be at all times under the general supervision of the mayor or his or her duly authorized agent, who shall have the authority by and with the consent of the governing body to make additional rules and regulations not inconsistent with the terms and provisions of this article requiring that the collection and transportation of trash and waste materials shall be conducted in such manner as not to endanger the public health, or to become an annoyance to the inhabitants of the city, and providing for a proper fee to be charged to the customer. (Code 1990)

15-522. FAILURE TO SECURE LICENSE. Any person who shall conduct or operate within the city limits any vehicle for the purpose of collecting and transporting solid waste without first obtaining a license as required by this article or who shall violate the terms and provisions of this article shall be deemed guilty of a violation of this code and upon conviction thereof shall be punished as provided in section 1-116. (Code 1990)

15-523. CHARGES. The city shall establish and collect a service charge to defray the cost and maintenance of the collection and disposition of solid waste within the city. (Code 1990)

15-524. SAME: FEE SCHEDULE.

- (a) Each residential unit shall pay \$19.75 per month, which includes a weekly collection of solid waste and twice-monthly collection of recyclable materials in a standard container provided by the contractor. (080-2023-023)

15-525. BILLING. Solid waste charges shall be billed monthly and shall be included on water or utility bills. No payment shall be accepted on utility bills except for the full amount billed for all services. Delinquent solid waste bills shall carry the due dates, grace periods and penalties as water bills.  
(Ord. 080-1987-008, Sec. 1; Code 1990)

15-526. SAME; DELINQUENT ACCOUNT. In the event the owner or occupant of any property shall fail to pay the solid waste bills within 60 days following the date upon which it becomes due, the city clerk shall annually certify such unpaid bills to the county clerk as a lien upon the property. The lien shall be collected subject to the same regulations and penalties as other property taxes are collected.  
(K.S.A. 65-3410; Code 1990)

15-527. FREQUENCY OF REMOVAL. Collection of garbage and refuse shall be as follows:

- (a) Garbage and refuse shall be collected and removed once each week from residential areas by the city through its contractor.

- (b) In commercial and industrial areas the occupant or owner of the premises shall provide for the collection and disposal of garbage and refuse accumulations from the premises at such frequent intervals as will prohibit the accumulation of garbage or refuse in such quantities which in the opinion of the health officer would constitute a health or sanitation hazard. Such collection and disposal may be by contract with a licensed collector or by the occupant or owner having a permit therefor as hereinafter provided.  
(Ord. 080-1982-002, Sec. 6)

## ARTICLE 6. WATER CONSERVATION

- 15-601. WATER SUPPLY EMERGENCY. The governing body is hereby authorized to declare in the event it becomes necessary, a water supply emergency and to implement voluntary and mandatory water conservation measures throughout the city if the emergency is declared. (Ord. 110-1989-053, Sec. 1)
- 15-602. DEFINITIONS. (a) Water - shall mean water available to the city for treatment by virtue of its water rights or any treated water introduced by the city into its water distribution system, including water offered for sale at any coin operated site.
- (b) Consumer - shall mean any person using water for any purpose from the city's water distribution system for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.
- (c) Waste of Water - shall include but is not limited to (1) permitting water to escape down a gutter, ditch, or other surface drain, or (2) failure to repair a controllable leak of water due to defective plumbing.
- (d) The following classes of uses of water are established:
- Class 1: Water used for outdoor watering, either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational areas; or the washing of motor vehicles, boats trailers or the exterior of any building or structure.
- Class 2: Water used for any commercial or industrial, including agricultural purposes; except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.
- Class 3: Domestic usage, other than that which would be included in either Classes 1 or 2.
- Class 4: Water necessary only to sustain human life and the lives of domestic pets and maintain minimum standards of hygiene and sanitation.  
(Ord. 110-1989-053, Sec. 2)
- 15-603. DECLARATION OF A WATER EMERGENCY. Whenever the governing body of the city finds that an emergency exists by reason of a shortage of water supply needed for essential uses, it shall be empowered to declare by resolution that a water supply emergency exists and that it will encourage voluntary water conservation or impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water supply emergency shall be effective upon their publication in the official city newspaper and may be publicized additionally through the general news media or any other appropriate method.  
(Ord. 110-1989-053, Sec. 3)
- 15-604. VOLUNTARY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in section 15-603, the mayor or designated representative is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate non-essential water uses including, but not limited to, limitations on the following uses:

- (a) Sprinkling of water on lawns, shrubs or trees (including golf courses);
  - (b) Washing of automobiles;
  - (c) Use of water in swimming pools, fountains and evaporative air conditioning systems;
  - (d) Waste of water.
- (Ord. 110-1989-053, Sec. 4)

15-605. MANDATORY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in section 15-603, the mayor or designated representative is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following:

- (a) Suspension of new connections to the city's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the city prior to the effective date of the declaration of the emergency;
  - (b) Restrictions on the uses of water in one or more classes of water use, wholly or in part;
  - (c) Restrictions on the sales of water at coin-operated facilities or sites;
  - (d) The imposition of water rationing based on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;
  - (e) Complete or partial bans on the waste of water; and
  - (f) Any combination of the foregoing measures.
- (Ord. 110-1989-053, Sec. 5)

15-606. EMERGENCY WATER RATES. Upon the declaration of a water supply emergency as provided in section 15-603, the governing body of the city shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but not be limited to:

- (a) Higher charges for increasing usage per unit of use (increasing block rates);
  - (b) Uniform charges for water usage per unit of use (uniform unit rate); or
  - (c) Extra charges in excess of a specified level of water use (excess demand surcharge).
- (Ord. 110-1989-053, Sec. 6)

15-607. REGULATIONS. During the effective period of any water supply emergency as provided for in section 15-603, the mayor or designated representative is empowered to promulgate such regulations as may be necessary to carry out the provisions of this article, any water supply emergency resolution, or emergency water rate ordinance. Such regulations shall be subject to the approval of the governing body at its next regular or emergency meeting.

(Ord. 110-1989-053, Sec. 7)

15-608. VIOLATION, DISCONNECTIONS AND PENALTIES. (a) If the mayor, or other designated city officials charged with implementation and enforcement of this article or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to sections 15-605 or 15-607 of this article, a written notice of the violation shall be affixed to the property where the violation

occurred and mailed to the consumer of record and to any other person known to the city who is responsible for the violation or its correction. The notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the city determines is reasonable under the circumstances. If the order is not complied with, the city may terminate water service to the consumer subject to the following procedures:

(1) The city shall give the consumer notice by mail that water service will be discontinued within a specified time due to the violation and that the consumer will have the opportunity to appeal the termination by requesting a hearing before the governing body or a city official designated as a hearing officer by the governing body;

(2) If such a hearing is requested by the consumer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and

(3) The governing body or hearing officer shall make finding of fact; and order the continuation or termination of service to the consumer.

(b) A fee of \$50.00 shall be paid for the reconnection of any water service terminated pursuant to subsection (a).

(c) Any consumer may also be charged with violation of this article and prosecuted in municipal court. Any person so charged and found guilty in municipal court of violating the provisions of this article shall be guilty of a misdemeanor. Each day's violation shall constitute a separate offense. The penalty for a violation shall be a mandatory fine of not less than \$100.00 or more than \$500.00, which may not be reduced by the municipal court. The court shall not have discretion to suspend the fine or grant probation nor set the fine below the minimum amount of the fine. In addition, such consumer may be sentenced to a definite term of confinement in the county jail which may be fixed by the court and which shall not exceed 30 days.

(Ord. 110-1989-053, Sec. 8)

15-609.

**EMERGENCY TERMINATION.** Nothing in this article shall limit the ability of any properly authorized city official from terminating the supply of water to any or all customers upon the determination of such city official that emergency termination of water service is required to protect the health and safety of the public. (Ord. 110-1989-053, Sec. 9)



## CHAPTER XVI. ZONING AND PLANNING

- Article 1. City Planning Commission
  - Article 2. Zoning Regulations
  - Article 3. Subdivision Regulations
  - Article 4. Floodway Districts
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### ARTICLE 1. CITY PLANNING COMMISSION

- 16-101. COMMISSION ESTABLISHED. Under the authority of K.S.A. 12-701 there is hereby created a planning commission for the City of Hesston. (Ord. 010-1976-024, Sec. 1; Code 1990)
- 16-102. MEMBERSHIP. The planning commission shall consist of not less than seven, nor more than nine members, two of whom shall reside outside the city limits and within a limit of three miles from the city limits.
- The members of the planning commission shall be appointed by the mayor with the approval of the city council. All terms shall commence on January 1st and expire on December 31st. The members of the commission first appointed shall serve respectively for terms of one year, two years, and three years, divided equally or as nearly equal as possible between these terms as one, two and three years. Thereafter members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired term only. Members of the commission shall serve without compensation for their service. (K.S.A. 12-702; Ord. 010-1976-024, Secs. 1:2; Code 2007)
- 16-103. POWERS; DUTIES. The planning commission shall have such powers and duties as prescribed by law and as many be provided by resolution from time to time. The area under its jurisdiction shall be the corporate limits of the city. As a primary function, the planning commission shall have the responsibility for the preparation, adoption, and recommendation of a long-range comprehensive plan to guide the future physical development of the city. Such general plan shall consist of land use element, a circulation element, and a public facilities element. The plan shall provide a statement of population distribution and density and proposed building intensities and other uses of land. The planning commission shall further have and exercise the following powers:
- (a) To recommend development plans for specific public works projects and for urban renewal. Such development plans shall be related to the general plan and shall insure the integration of proposed land uses and for matters of access and relationship to the neighborhood within which such development plans provide for construction. Development plans shall also contain analysis methods of financing proposed public works.
  - (b) To cause to be prepared zoning studies and shall recommend the zoning of all land within their jurisdiction, and shall have all of the zoning functions, powers and duties which are given by the laws of the state and by action of the governing body.
  - (c) Cause to be prepared recommendations governing the control of subdivisions within the area of their jurisdiction.
  - (d) Cause to be prepared annually for the city a statement of current and past growth and development trends and anticipated growth for the succeeding year and

for the succeeding five years. Such annual statement of anticipated growth and development shall also contain an annual review of the state of the comprehensive plan and recommended adjustments in such plan. Such annual review statement shall be transmitted to the governing body the first meeting in March of each year.

(e) Cause to have reviewed annually all proposed capital improvement project budgets of the city to insure their conformity with the comprehensive plan.

(f) Any other element deemed necessary to the prop development or redevelopment of the area.

(Ord. 010-1991-081, Sec. 1)

16-104. ORGANIZATION; MEETINGS; QUORUM; RECORDS. (a) The planning commission shall convene for its meetings at such time and place as shall be fixed by the chairperson and shall organize and elect officers, adopt bylaws and fix and determine times and places of future meetings, which meetings shall not be less frequent than once a month. The planning commission shall elect one member as chairperson and another as vice-chairperson. The terms of the chairperson and vice-chairperson shall be for one year and until their successors shall be elected and qualified. Special meetings of the planning commission may be called by the chairperson, or, in his or her absence, by the vice-chairperson, or by the governing body. A quorum of the planning commission shall consist of four members.

(b) The planning commission shall designate a secretary who need not be a member of the planning commission. The secretary shall cause a proper record to be kept of all proceeding of the planning commission, copies of which shall be placed on file for public inspection and copies of which shall be promptly furnished to the governing body.

(Ord. 010-1991-081, Sec. 1)

16-105. COMPENSATION. All members of the commission shall serve without compensation, but they may be reimbursed for their expenses actually incurred in the performance of their duties.

(K.S.A. 12-702; Ord. 010-1976-024, Sec. 2; Code 1990)

16-106. REMOVAL OF MEMBERS. No member of the commission shall be removed during his or her term of office, except for cause, and after a hearing held before the governing body by whom he or she was appointed, or in case of disqualification by moving out of the city, or by moving out of the area represented by him or her on the planning commission. (Code 1990)

16-107. BUDGET. On or before the first Monday in June of each year the planning commission shall submit to the city administrator of the city a budget of income and expenditures for the ensuing fiscal year on forms to be provided by the city. Thereupon, the budget shall be considered by the governing body and the budget, as submitted or as the same may be amended, may be approved and adopted by the governing body to the extent of 10 percent of such amended or revised general operating fund budget of the city council of the city. The city treasurer of the city is hereby designated as a custodian and the city clerk is designated as disbursing agent for the total budget. (Ord. 010-1976-024, Sec. 5; Code 1990)

## **ARTICLE 2. ZONING REGULATIONS**

- 16-201. ZONING REGULATIONS INCORPORATED. There are hereby incorporated by reference as if set out fully herein, the zoning regulations adopted by the governing body of the City of Hesston, Kansas, and consisting of Ordinance No. 130-1997-086 and amendments thereto, and entitled, "Zoning Ordinance for the City of Hesston, Kansas." No fewer than three copies of the zoning regulations, marked "Official Copy as Incorporated by the Code of the City of Hesston" and to which there shall be a published copy of this section attached, shall be filed with the city clerk to be open for inspection and available to the public at all reasonable business hours. (Ord. 130-1997-086; Code 1990)

## **ARTICLE 3. SUBDIVISION REGULATIONS**

- 16-301. REGULATIONS INCORPORATED. There is hereby incorporated by reference, as if set out fully herein, certain regulations governing the subdivision of land located within the City of Hesston, Kansas and certain surrounding area as described therein, as adopted by the governing body of the City of Hesston, Kansas and consisting of Ordinance No. 130-2003-104 and amendments thereto. No fewer than three copies of the subdivision regulations marked "Official Copy as incorporated by the Code of the City of Hesston" and to which there shall be a published copy of this section attached, shall be filed with the city clerk to be open for inspection and available to the public at all reasonable hours.  
(Ord. 130-2003-104, Sec. 1; Code 2003)

#### ARTICLE 4. FLOODWAY DISTRICTS

16-401. STATUTORY AUTHORIZATION; PURPOSES. (a) The legislature of the State of Kansas has in K.S.A. 12-707 et seq. delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the health, safety and general welfare.

(b) It is the purpose of this article to promote the public health, safety and general welfare and to minimize those losses described in section 16-402(a) by applying the provisions of this article to:

(1) Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.

(2) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

(3) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

(4) Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

(Ord. 010-1979-034, Sec. 1.1, 1.3)

16-402. FINDINGS OF FACT. (a) The flood hazard areas of the city are subject to inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by (1) the cumulative effective of obstruction in floodways causing increases in flood heights and velocities, (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damages.

(c) This article uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

(1) Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The regulatory flood selected for this article is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this article. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year, as delineated on the federal insurance administration's flood insurance study, and illustrative materials dated November 1, 1979, as amended.

(2) Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.

(3) Computation of the floodway required to convey this flood without increasing flood heights more than one foot at any point.

(4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

(5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the regulatory flood.

(Ord. 010-1979-034, Sec. 1.2)

16-403.

DEFINITIONS. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this article its most reasonable application.

(a) Actuarial or Risk Premium Rates - Those rates established by the administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. Risk premium rates include provisions for operating costs and allowances.

(b) Appeal - A request for a review of the city administrator's interpretation of any provision of this article or a request for a variance.

(c) Area of Special Flood Hazard - The land in the flood plain within a community subject to one percent or greater chance of flooding in any given year.

(d) Base Flood - The flood having a one percent chance of being equaled or exceeded in any given year.

(e) Channel - A natural or artificial watercourse or perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus is that water which is flowing within the limits of a defined channel.

(f) Development - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

(g) Existing Construction - For the purposes of determining rates means structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date. Existing construction may also be referred to as existing structures.

(h) Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

(i) Flood Elevation Determinations - A determination of the water surface elevations of the 100 year flood, that is, the level of flooding that has a one percent chance of occurrence in any given year.

(j) Flood Insurance Rate Map (FIRM) - An official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

(k) Flood Insurance Study (FIS) - The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

(l) Flood Plain Management - The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

(m) Flood Protection Systems - Those physical structural works constructed specifically to modify flooding in order to reduce the extent of the are within a community subject to a special flood hazard. These specialized modifying works are limited t those constructed in conformance with solid federal engineering standards.

(n) Flood Proofing - Any combination of structural and nonstructural additions, changes or adjustments to structures, including utility and sanitary facilities, which

would preclude the entry of water. structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

(o) Floodway or Regulatory Floodway - The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(p) Floodway Fringe - That area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

(q) Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

(r) Highest Adjacent Grade - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(s) Lowest Floor - The lowest floor of the lowest enclosed area (including the basement) of any structure. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the application non-elevated design requirements of these regulations.

(t) Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term manufactured home does not include park trailers, travel trailers, and other similar vehicles.

(u) Manufactured Home Park (Subdivision) - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this article.

(v) New Construction - Structures for which the start of construction or substantial improvement is commenced on or after the effective date of the FIRM.

(w) Overlay District - A district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

(x) Regulatory Flood Elevation - The RFE indicated on the FIRM as the elevation of the 100 year flood.

(y) Regulatory Flood Protection Elevation - An elevation one foot higher than the water surface elevation of the regulatory flood.

(z) Start of Construction - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348) includes substantial improvement) - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or

footings or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure.

(aa) Structure - A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

(bb) Substantial Improvement - Any structure that is:

(A) Listed individually in the National Register of Historic Place or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

(C) Individually listed on the State inventory of historic places in Kansas through the Kansas Historic Preservation Commission as approved by the Secretary of the Interior; or

(D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

(1) By an approved state program as determined by the Secretary of the Interior.

(2) Directly by the Secretary of the Interior in the case the state's program is not recognized.

(cc) Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(dd) Substantial Improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

(ff) Variance - A grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

(Ord. 010-1993-087, Sec. 1; Ord. 010-1995-095))

16-404. LANDS TO WHICH ARTICLE APPLIES. This article shall apply to all lands within the jurisdiction of the city identified on the flood insurance rate map (FIRM) as

numbered and unnumbered "A Zones" (including AE, AO, and AH zones) and within the zoning districts FW and FF established in section 16-418 of this article. In all areas covered by this article no development shall be permitted except upon a permit to develop granted by the city council or its duly designated representative under such safeguards and restrictions as the council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the city and where specifically noted in section 16-419:421. (Ord. 010-1987-063, Sec. 2.1)

16-405.           **ENFORCEMENT OFFICER.** The city administrator of the city is hereby designated as the enforcement officer under this article. (Ord. 010-1979-034, Sec. 2.2)

16-406.           **RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.** The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the enforcement officer shall make the necessary interpretation. In such cases where the interpretation is contested, the board of zoning appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the board and to submit his or her own technical evidence, if he or she so desires. (Ord. 010-1979-034, Sec. 2.3)

16-407.           **COMPLIANCE.** No development located within known flood hazard areas of the city shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other application regulations. (Ord. 010-1979-034, Sec. 2.4)

16-408.           **ABROGATION AND GREATER RESTRICTIONS.** It is not intended by this article to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other provisions of this code inconsistent with this article are hereby repealed to the extent of the inconsistency only. (Ord. 010-1979-034, Sec. 2.5)

16-409.           **INTERPRETATION.** In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes. (Ord. 010-1979-034, Sec. 2.6)

16-410.           **WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man made or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted



within such districts will be free from flooding or flood damages. This article shall not create liability on the part of the city or any officer or employee thereof for any flood damages that may result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. 010-1979-034, Sec. 2.7)

16-411. ADMINISTRATION. (a) The city administrator is hereby appointed to administer and implement the provisions of this article.

(b) Duties of the city administrator shall include, but not be limited to:

(1) Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.

(2) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Notify adjacent communities and the Kansas Board of Agriculture prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Insurance Administration.

(4) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.

(5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improve structures.

(6) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.

(7) When floodproofing is utilized for a particular structure the city administrator shall be presented certification from a registered professional engineer or architect.

(8) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the building inspector shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(9) When base flood elevation data has not been provided the building inspector shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source.

(10) All records pertaining to the provisions of this article shall be maintained in the office of the city clerk and shall be open for public inspection.

(Ord. 010-1979-034, Sec. 3.2)

16-412. PERMIT REQUIRED. No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate development permit for each such building or structure.

(Ord. 010-1979-034, Sec. 3.1)

16-413. SAME; APPLICATION. To obtain a permit, the applicant shall first file an application in writing on a form furnished by the city clerk for that purpose. Every such application shall:

(a) Identify and describe the work to be covered by the permit;

(b) Describe the land on which the proposed work is to be done by lot, block tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work;

- (c) Indicate the use or occupancy for which the proposed work is intended;
  - (d) Be accompanied by plans and specifications for proposed construction;
  - (e) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority;
  - (f) Give such other information as reasonably may be required by the planning commission.
- (Ord. 010-1979-034, Sec. 3.3)

- 16-414.           VARIANCE; PROCEDURE. (a) The board of zoning appeals of the city shall hear and decide appeals and requests for variances from the requirements of this article and shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the city administrator in the enforcement or administration of this article.
- (b) Any person aggrieved by the decision of the board of zoning appeals may appeal such decision to the district court of Harvey County, Kansas.
- (Ord. 010-1987-063, Sec. 8.1:8.3)

- 16-415.           SAME; FACTORS. In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, standards specified in this article, and
- (a) the danger that materials may be swept onto other lands to the injury of others;
  - (b) the danger to life and property due to flooding or erosion damage;
  - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) the importance of the services provided by the proposed facility to the community;
  - (e) the necessity to the facility of a waterfront location, where applicable;
  - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) the compatibility of the proposed use with existing and anticipated development;
  - (h) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (k) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (Ord. 010-1987-063, Sec. 8.4)

- 16-416.           SAME; ISSUANCE. (a) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (b):(f) below, have been fully considered. As

the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(b) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued upon (1) a showing of good and sufficient cause, (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(e) Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increase risk resulting from the reduced lowest floor elevation.

(f) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the national register of historic places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.

(Ord. 010-1987-063, Sec. 8.5)

16-417. APPEAL. The appeal procedure for this article shall be the same as that set forth in Article X of the zoning ordinances of the city incorporated by reference in section 16-201 of this code. (Ord. 010-1979-034, Sec. 2.9; Code 1990)

16-418. ESTABLISHMENT OF ZONING DISTRICTS. The mapped flood plain areas within the jurisdiction of this article are hereby divided into two districts: a floodway overlay district (FW) and a floodway fringe overlay district (FF), identified in the flood insurance study (and accompanying map(s)). Within these districts all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered "A Zones" (including AE, AO, and AH zones) as identified on the official FIRM and identified in the flood insurance study provided by the federal insurance administration. (Ord. 010-1987-063, Sec. 4.0)

16-419. STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT. (a) No permit for development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all numbered and unnumbered "A Zones" (including AE, AO, and AH zones) unless the conditions of this section are satisfied.

(b) All areas identified as unnumbered "A Zones" on the FIRM are subject to inundation of the 100-year flood; however, the water surface elevation was not provided. The unnumbered "A Zones" shall be subject to all development provisions of this article. If flood insurance study data is not available the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources.

(c) New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

(1) Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) New or replacement water supply systems and/or sanitary sewage systems be designated to minimized or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters, and on-site water disposal systems be located so as to avoid impairment or contamination;

(3) Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designated and/or located so as to prevent water from entering or accumulating within components during conditions of flooding;

(4) All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation;

(5) That until a floodway has been designated, no development, including landfill, may be permitted within Zones A1-30 and AE on the city's FIRM unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one foot on the average cross section of the reach in which the development or landfill is located as shown on the Flood Insurance Rate Study incorporated by reference;

(6) Storage and Material and Equipment.

(A) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(B) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(Ord. 010-1979-034, Sec. 5.3; Ord. 010-1987-063, Sec. 5.3)

16-420.

FLOODWAY FRINGE OVERLAY DISTRICT; PERMITTED USES. Any use permitted in section 16-421 shall be permitted in the floodway fringe overlay district. No use shall be permitted in the district unless the standards of section 16-419 are met.

(a) Residential Construction - New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

(b) Non-Residential Construction - New construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be as provided in section 16-411.

(c) Fully Enclosed Areas - All new construction and substantial improvements that fully enclose areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement

must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria; A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(d) AH Zones - Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

(e) Manufactured Homes -

(1) All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the flooding specific requirements (or their equivalent) shall be met:

(i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side;

(ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side;

(iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and,

(iv) any additions to the mobile home be similarly anchored.

(2) All manufactured homes shall be placed within A1-30, AH, and AE Zones on the community's FIRM. All manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (e)(1).

(Ord. 010-1979-034, Sec. 6; Ord. 010-1987-063, Sec. 6)

16-421. FLOODWAY OVERLAY DISTRICT. Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. These uses are subject to the standards of sections 16-419:420.

(a) Agricultural uses such as general farming, pasture, nurseries, forestry.

(b) Residential uses such as lawns, gardens, parking and play areas.

(c) Non-residential areas such as loading areas, parking, airport landing strips.

(d) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

(e) In Zone A unnumbered, obtain, review and reasonably utilize any floodway data available through federal, state or other sources or section 15-422 of this article, in meeting the standards of this section.

(Ord. 010-1979-043, Sec. 7; Ord. 010-1987-063, Sec. 7)

- 16-422.           STANDARDS FOR SUBDIVISION PROPOSALS. (a) All subdivision proposals and other proposed new development including manufactured home parks or subdivisions shall: (1) be consistent with the need to minimize flood damage; (2) have the public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage; and (3) have adequate drainage provided to reduce exposure to flood hazards.  
                  (b) Base flood elevation data shall be provided for subdivision proposals and other proposed development including manufactured home parks which is greater than the lesser of 50 lots or five acres.  
(Ord. 010-1987-063, Sec. 5.3)
- 16-423.           NON-CONFORMING USE. (a) A structure or the use of a structure or premises which was lawful before the passage or amendment of this article but which is not in conformity with the provisions of this article may be continued subject to the following conditions:  
                  (1) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this article. The city clerk shall notify the city administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.  
                  (2) Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.  
                  (b) If any nonconforming use or structure is destroyed by any means including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this article. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the national register of historic places or a state inventory of historic places.  
(Ord. 010-1979-034, Sec. 9; Ord. 010-1987-063, Sec. 9.0)
- 16-424.           PENALTIES. (a) Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.  
                  (b) Nothing herein contained shall prevent the governing body or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.  
(Ord. 010-1979-034, Sec. 10)
- 16-425.           AMENDMENTS. The regulations, restrictions, and boundaries set forth in this article may from time to time be amended, supplemented, changed or repealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days notice of the time and place of such hearing shall be

published in a newspaper of general circulation in the city. The regulations of this article are in compliance with the National Flood Insurance Program Regulations. (Ord. 010-1987-063, Sec. 11)

- 16-426. SEVERABILITY. If any section, clause, provision or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby. (Ord. 010-1979-034, Sec. 2.8)

## **CHAPTER XVII. COLLECTION OF ACCOUNTS**

### **ARTICLE 1. GENERAL PROVISIONS**

- 17-101. **COLLECTION.** All accounts and debts owed to the City, including, but not limited to, utility accounts (e.g., water, gas, sewer, solid waste), emergency medical service charges, fines, fees, assessments, costs, and interest, shall be paid as provided in the Code. The City may engage an agent to collect any account or debt owed to the City that is delinquent. In addition to the amount owed, the account debtor shall pay any and all reasonable costs and expenses of collection of such delinquent accounts or debts, including, but not limited to, court costs, surcharges, attorneys' fees, and collection agency fees.  
(Ord. 020-2018-168)



## **APPENDIX A - CHARTER ORDINANCES**

NOTE: The charter ordinances included herein are for information only. Each of them 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 charter ordinance as adopted are on file in the office of the city clerk and with the Kansas secretary of state. Date of passage by the governing body of each charter ordinance is shown in parentheses at the end of the text.

### **CHARTER ORDINANCE NO. 140-1967-001**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, FROM SECTION 15-201 K.S.A. AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT, RELATING TO THE ELECTION OF MAYOR, AND FIVE COUNCILMEN, TIE VOTE, THEIR TERMS OF OFFICE, QUALIFYING, FAILURE TO QUALIFY OR ACCEPT OFFICE, FILLING VACANCIES AND CERTIFICATES OF ELECTION. (Repealed by C.O. No. 140-1988-007)

### **CHARTER ORDINANCE NO. 140-1970-002**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM K.S.A. 12-1640, RELATING TO DEMAND DEPOSITS OF PUBLIC MONEYS AND CERTAIN DUTIES OF THE CITY TREASURER.

Section 1. Exemption from Statute. The City of Hesston, Kansas by the power invested 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. 12-1640, which applies to said city but not uniformly to all cities. (04-16-70)

### **CHARTER ORDINANCE NO. 140-1980-670**

A CHARTER ORDINANCE ALLOWING THE CITY OF HESSTON, KANSAS, TO ADOPT K.S.A. 12-825d, SUBSECTION (b), AND 12-825g, AS AMENDED; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AUTHORIZING THE CREATION OF A SPECIAL FUND FOR THE PURPOSE OF COMMUNITY AND UTILITY PROMOTION.

Section 1. The City of Hesston, Kansas, by the powers vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to adopt and make applicable to it K.S.A. 12-825d and 12-825g, as amended, and to provide substitute and additional provisions as hereinafter set forth in this charter ordinance. K.S.A. 12-825d and 12-825g are a part of an enactment of the legislature establishing a community and utility promotion fund from surplus utility moneys but is not applicable uniformly to all cities.

Section 2. The provisions of K.S.A. 12-825d shall apply to the City of Hesston in this manner:

(a) Upon approval of the voters as authorized by K.S.A. 12-825g, and amendments thereto, a part of utility surpluses may be annually transferred, for a

period not exceeding five years, to a special fund, which shall be known as "The Community and Utility Promotion Fund."

(b) The total amount transferred to such fund in any one calendar year shall not exceed one percent of the gross income derived from the sale of water, fuel, power and light during the preceding year by such city, or (2) \$10,000, whichever amount is the lesser, and at no time shall there be more than \$50,000 in said fund, and the moneys in said fund may be expended for the purposes authorized by K.S.A. 12-825g, and amendments thereto.

(c) Such surpluses, in whole or in part, may be set aside in a depreciation reserve fund of the utility which may be used as hereinabove provided, and which may be invested in investments authorized by K.S.A. 12-1675 and amendments thereto.

(08-06-80)

### **CHARTER ORDINANCE NO. 140-1981-003**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 79-1952, REGARDING THE MILL LEVY LIMITATION FOR LIBRARY PURPOSES AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT. (Repealed by C.O. No. 140-2004-012)

### **CHARTER ORDINANCE NO. 140-1983-004**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON FROM K.S.A. 79-5001 TO 79-5017, INCLUSIVE, AND ANY AMENDMENTS THERETO.

Section 1. The City of Hesston, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 79-5001 to 79-5017, inclusive, and any amendments thereto, which is an enactment of the legislature applicable to this city but which is not applicable uniformly to all cities.

Section 2. The provisions of K.S.A. 79-5001 to 79-5017, inclusive, and any amendments thereto, shall not apply to any taxes levied by the City of Hesston. (03-14-83)

### **CHARTER ORDINANCE NO. 140-1985-005**

A CHARTER ORDINANCE ALLOWING THE CITY OF HESSTON, KANSAS, TO ADOPT K.S.A. 13-1904: PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; CONTROL AND REGULATION OF RAILROADS ON STREETS.

Section 1. The City of Hesston, Kansas, by the powers vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to adopt and make applicable to it K.S.A. 13-1904, all as hereinafter set forth in this charter ordinance. K.S.A. 13-1904 provides for control and regulation of railroads on streets but is not applicable uniformly to all cities.

Section 2. The provisions of K.S.A. 13-1904 shall apply to the City of Hesston in this manner:

Control and regulation of railroads on streets. The city council shall have power by ordinance to require all street and other railway companies to keep the streets and alleys over which they run properly drained, and to light the same wherever deemed necessary, and to require all street and other railway companies to construct and keep in repair, to their full width, all viaducts, and all crossings over all ditches used by them, and to construct and maintain drains and culverts where crossed by any line of said railways on all streets and alleys over which they run, to direct and control the laying and construction of railway tracts, turnouts, and switches, and to regulate the grade of the same, and to require them to conform to the grade of the streets and alleys of said city as they may be hereafter or are now established; and the cost of such improvements shall be a lien upon the property and franchises of any such company, and may be assessed and taxed against the property in the same manner as other taxes are levied. Said council shall have power by ordinance to require any railroad company or street railway company to pay the cost of grading, paving, repaving, draining and repairing of such streets and alleys used or occupied by such railroad or railway company, and such cost shall be a lien upon the property and franchises of the company, and shall be assessed and taxed against the same like other taxes.

The portion of the street or alley so used or occupied by such railway companies shall be deemed to be the space between their tracks and 18 inches on the outside of each of their rails, and all the space between two or more tracks, turnouts, and switches. Any railroad company or street-railway company occupying any street or alley already occupied by any other such company, in addition to paying for paving or repaving as provided for in the next preceding paragraph, shall pay one-half the cost of paving or repaving between the tracks of said two roads. (06-10-85)

#### **CHARTER ORDINANCE NO. 140-1987-006**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-4112 AND PROVIDING SUBSTITUTE PROVISIONS ON THE SUBJECT OF MUNICIPAL COURT COSTS.

Section 1. The City of Hesston, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, elects to exempt itself from and make inapplicable to it K.S.A. 12-4112 and any amendments thereto; and to provide substitute provisions as hereinafter set forth. Such statutory section is applicable to the City of Hesston, Kansas, but is not applicable uniformly to all cities.

Section 2. The provisions of K.S.A. 12-4112 are hereby repealed.

Section 3. The costs shall be assessed against accused persons for the administration of justice in any municipal court case where the accused person is found guilty or where the accused person pleads guilty. The city council shall by ordinance specify the base amount on court costs for cases before the municipal court and for costs for various actions deemed necessary in said cases. Base court costs shall not be imposed for violation of any ordinance or resolution relating to unlawful parking. These charges shall be assessed in addition to and not in lieu of the fees and mileage of witnesses which may be assessed in accordance with K.S.A. 12-4411. (11-09-87)

**CHARTER ORDINANCE NO. 140-1988-007**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS FROM PROVISIONS OF K.S.A. 14-103, 14-109, 14-201, 14-207 AND 14-440, RELATING TO THE DIVISION OF THE CITY INTO WARDS, ELECTION AND TERMS OF COUNCILMEMBERS, ELECTIVE AND APPOINTIVE OFFICERS AND ENGINEERING ESTIMATES, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; REPEALING CHARTER ORDINANCE NO. 140-1967-001.

Section 1. That the City of Hesston, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and does exempt itself and make inapplicable to it K.S.A. 14-103, 14-109, 14-201, 14-207 and 14-440, which applies to this city, but is part of an enactment which does not apply uniformly to all cities.

Section 2. A regular city election shall be held on the first Tuesday in April of each odd numbered year. At such elections, the candidates for councilmembers receiving the two or three (as the case may be) and the candidate for mayor receiving the highest number of votes shall be declared elected. Whenever there is a tie vote for two or more candidates and it is necessary to determine which candidate receives the office, the winner shall be determined by lot by the board of canvassers. The city clerk, shall, within three days after the canvass of the returns and determination by the board of canvassers of the persons elected, deliver to such persons a certificate of election, signed by her and sealed with the seal of the city; and such certificate shall constitute notice of election.

Section 3. City Council; Number Qualifications. City council shall consist of five citizens of said city who, together with the mayor, shall be qualified electors of the City of Hesston, Kansas under the constitution of the State of Kansas.

Section 4. Officers; Appointment; Removal. (Repealed by C.O. No 140-1996-011)

Section 5. Vacancies in Offices of Mayor or Councilmember, How Filled; President of Council. No person shall be eligible for the office of councilmember who is not at the time of election an actual resident of the city. If any councilmember moves from the city during such councilmember's term of office, the office shall be deemed vacant. In case of a vacancy in the office of a councilmember occurring by reason of resignation, death, removal from the city, removal from office, or by becoming mayor by reason of being president of the council when a vacancy occurs in the office of the mayor, the mayor shall appoint, with the consent of a majority of the remaining councilmembers, some suitable elector of the city to fill the vacancy until the expiration of the term of such office. The council shall elect from its membership a president of the council. The president of the council shall preside in the absence of the mayor. If a vacancy occurs in the office of the mayor by death, resignation, removal from the city, removal from office, refusal to qualify or otherwise, the president of the council shall become mayor until the next regular city election and the vacancy created in the office of the councilmember becoming mayor shall be filled by the governing body of the city. Thereupon, the council shall elect from its membership a new president of the council.

Section 6. That Charter Ordinance 140-1967-001, duly adopted on January 18, 1967 and which was published and became effective as provided by law, and which exempted said city from the provisions of K.S.A. 15-201, as amended, and provided substitute and additional provisions on the subject relating to the terms of elected offices and providing for the same is, hereby repealed. (02-08-88)

#### **CHARTER ORDINANCE NO. 140-1989-008**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE PROVISIONS OF SECTION 2 OF 1989 HOUSE BILL 2454, RELATING TO NATURAL GAS PIPELINE INSPECTION AND MAINTENANCE AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

Section 1. The City of Hesston, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas hereby elects to and does exempt itself and make inapplicable to it Section 2 of 1989 House Bill 2454 which applies to this city, but is part of an enactment which does not apply uniformly to all cities.

Section 2. The city shall continue the inspection of pipelines that convey gas from a gas main to the outside wall of residential premises which are individually metered and directly served by the city gas utility, as required by state and federal laws and regulations, and shall have access rights to carry out such responsibility.

Section 3. It is the judgment of the governing body that the public safety of areas served by the city gas utility, and the cost of gas service provided by the city, will be best served by providing inspections as required under Section 2, but requiring the cost of repairs to privately owned gas pipelines to be paid by the owner. The governing body has provided, by Ordinance No. 150-1989-021, the means and standards for repairing gas pipelines. (07-10-89)

#### **CHARTER ORDINANCE NO. 140-1993-009**

**A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-1697 AND 12-16,101, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.**

Section 1. The City of Hesston, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, elects to exempt itself from and make inapplicable to it K.S.A. 12-1697 and 12-16,101, and any amendments thereto; and to provide substitute and additional provisions as hereinafter set forth. Such statutory section is applicable to the City of Hesston, Kansas but is not applicable uniformly to all cities.

Section 2. The governing body of the City of Hesston, Kansas, hereby provides the following substitute and additional provisions to those portions of K.S.A. 12-1697 and 12-16,101 regarding creation of a transient guest tax levy and establishment of a convention and tourism committee.

12-1697 (a). In order to provide revenues to promote tourism and conventions, the governing body of any county or city is authorized to levy a transient guest tax at not to exceed the rate of three percent upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax shall be determined by governing body and shall be specified in the resolution authorizing the same.

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2-16,101. Upon levying a transient guest tax, the governing body of the City of Hesston shall establish a Convention and Tourism Committee to make recommendations concerning the programs and expenditures for promotion of conventions and tourism. The mayor of the City of Hesston, with the consent and approval of the city council, shall appoint 10 members, who shall be residents of the City of Hesston, to such committee. Of the initial membership, four shall serve for one year, three for two years and three for three years. Thereafter, the members of said committee shall be selected in the same manner as the member he or she is succeeding and the term of office of each shall be three years. Whenever a vacancy occurs in the membership of said committee, an elector shall be selected to fill such vacancy in the same manner as and for the unexpired term of the member he or she is succeeding. The mayor annually appoint a chairman and the committee shall elect a secretary who shall keep an accurate record of the minutes and proceedings of each meeting and shall make such minutes available to the governing body upon request.

(04-12-94)

**CHARTER ORDINANCE NO. 140-1995-010**

**A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 14-111 AND PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECT. (Repealed by C.O. No 140-2006-013)**

**CHARTER ORDINANCE NO. 140-1996-011**

A CHARTER ORDINANCE AMENDING CHARTER ORDINANCE NO. 140-1988-007 IN ORDER TO CREATE SPECIFIC TERMS OF OFFICE FOR CITY OFFICERS.

Section 1. Authority. The City of Hesston, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the constitution of the State of Kansas, hereby elects to amend Charter Ordinance No. 140-1988-007 in order to create specific terms of office for city officers as set out herein.

Section 2. Amendment. Section 4 of Charter Ordinance No. 140-1988-007 is hereby amended from:

Officers; Appointment; Removal. The mayor shall appoint, by and with the consent of the council, a municipal judge of the municipal court, a chief of police, city clerk, city administrator, city treasurer, fire chief, city attorney, and shall appoint such other officers and employees as the mayor and council may deem necessary; and may retain a licensed professional engineer to act in the capacity of city engineer for specified duties. The duties and pay of such officers shall be regulated by ordinance.

to read as follows, to wit:

Officers; Appointment; Removal. The mayor shall appoint, by and with the consent of the council, a municipal judge of the municipal court, a chief of police, city clerk, city administrator, city treasurer, fire chief, and city attorney, all of whom shall serve a term of one year, and shall appoint such other officers and employees as the mayor and council may deem necessary; and may retain a licensed professional engineer to act in the capacity of city engineer for specified duties. The terms of office for all city officers serving on the effective date of adoption of this ordinance shall end at the regular city council meeting in February, 1997. The duties and pay of such officers shall be regulated by ordinance.

(10-15-96)

**ORDINANCE NUMBER 140-2004-012**

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO. 140-1981-003, REGARDING THE MILL LEVY LIMITATION FOR LIBRARY PURPOSES.

Section 1. Authority. The City of Hesston, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to repeal Charter Ordinance No. 140-1981-003 regarding the mill levy limitation for library purposes.

Section 2. Repeal. Charter Ordinance No. 140-1981-003 is hereby repealed.  
(05-10-04)

**ORDINANCE NUMBER 140-2006-013**

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO. 140-1995-010, REGARDING EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE

PROVISIONS OF K.S.A. 14-111 AND PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECT.

Section 1. Authority. The City of Hesston, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to repeal Charter Ordinance No. 140-1995-010 regarding exempting the City of Hesston from the provisions of K.S.A. 14-111.

Section 2. Repeal. Charter Ordinance No. 140-1995-010 is hereby repealed. (04-10-06)

**CHARTER ORDINANCE NO. 140-2008-037**

A CHARTER ORDINANCE OF THE CITY OF HESSTON, KANSAS EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 12-1758(a) AND K.S.A. 12-1767 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR ON THE SAME SUBJECT RELATING TO PUBLIC BUILDING COMMISSIONS.

Section 1.Exemption from Statute. The City, pursuant to Article 12, §5 of the Kansas Constitution, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 12-1758 (a) and K.S.A. 12-1767.

Section 2.Enactment of Substitute Provisions for K.S.A. 12-1758 (a). The following provisions are enacted in substitution for K.S.A. 12-1758 (a):

The City, by ordinance, may create a public building commission for the purpose of acquiring a site or sites for and constructing, reconstructing, equipping and furnishing a building or buildings or other facilities of a revenue producing character, including parking facilities, and for purchasing or otherwise acquiring any such building or buildings or facilities. Such building or buildings or other facilities shall be maintained and operated for the affairs and activities of any federal, state, City, school district or county governmental agency, or any municipal corporation, quasi-municipal corporation, political subdivision or body politic, or agency thereof, doing business, maintaining an office or rendering a public service within Harvey County, Kansas. Without in any way limiting the generality or scope of the foregoing, such buildings or facilities may specifically include buildings or

other facilities, including all furnishings and equipment, maintained for public recreational and park facilities or a public library. Section 3.Substitute Provisions for K.S.A. 12-1767.Any revenue bonds proposed to be issued by a public building commission created by the City shall be issued as provided in K.S.A. 10-1201 *et seq.*, and amendments thereto, except to the extent that such statutes are in conflict with the Public Building Commission Act as exempted and amended by this Charter Ordinance. The issuance of any such revenue bonds shall not be subject to any petition or protest.



**CHARTER ORDINANCE NO. 140-2008-038**

EXEMPTING SUCH CITY FROM THE PROVISIONS OF 2008 HOUSE BILL 2217 RELATING TO MAYORAL APPOINTMENTS THEREBY, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS RELATING THERETO.

Section 1. Exemption. The City of Hesston, by virtue of the power vested in it by Article 12, Section 5 of the constitution of the State of Kansas, hereby elects to and does exempt itself and make inapplicable to it 2008 House Bill 2217 which applies to this city but does not apply uniformly to all cities.

Section 2. Mayoral Appointments. The City of Hesston shall continue the procedure for mayoral appointments and confirmations as established in Chapter I, Article 3 of Hesston City Code.

**CHARTER ORDINANCE NO. 140-2010-039**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-1697, REPEALING CHARTER ORDINANCE NO. 140-1993-009, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

Section 1. The City of Hesston, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, elects to exempt itself from and make inapplicable to it K.S.A. 12-1697, and any amendments thereto; repeal Ordinance No. 140-1993-009; and to provide substitute and additional provisions as hereinafter set forth. Such statutory section is applicable to the City of Hesston, Kansas but is not applicable uniformly to all cities.

Section 2. The governing body of the City of Hesston, Kansas, hereby repeals Charter Ordinance No. 140-1993-009 and provides the following substitute and additional provisions to those portions of K.S.A.12-1697 regarding creation of a transient guest tax levy.

12-1697 (a). In order to provide revenues to promote tourism and conventions, the governing body of any county or city is authorized to levy a transient guest tax at not to exceed the rate of five percent upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax shall be determined by governing body and shall be specified in the resolution authorizing the same.

**CHARTER ORDINANCE NO. 140-2016-040**

A CHARTER ORDINANCE EXEMPTING THE CITY OF HESSTON, KANSAS FROM PROVISIONS OF K.S.A. 14-103, 14-201, 14-204, 14-207, 14-308, AND 14-440; REPEALING CHARTER ORDINANCE NOS. 140-1988-007 AND 140-1996-011; AND PROVIDING SUBSTITUTE AND

ADDITIONAL PROVISIONS ON THE SAME SUBJECT TO BE INCLUDED  
IN THE MUNICIPAL CODE.

WHEREAS, the governing body of the City of Hesston, Kansas (the "City") is authorized by Article 12, § 5 of the Constitution of the State of Kansas to determine its local affairs and government and to elect by charter ordinance that the whole or any part of a statutory enactment applicable to the City but not uniformly applicable to all cities shall not apply to the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HESSTON, KANSAS.

**Section 1. REPEAL.** Except to the extent that the same repeals prior law, Charter Ordinance Nos. 140-1988-007 and 140-1996-011 are hereby repealed.

**Section 2. INAPPLICABILITY.** The City of Hesston, Kansas (the "City"), by virtue of the power vested in it by Article 12, § 5 of the Constitution of the State of Kansas, hereby elects to and does exempt itself and make inapplicable to it K.S.A. 14-103, 14-201, 14-204, 14-207, 14-308, and 14-440, which applies to this City, but is part of an enactment which does not apply uniformly to all cities.

**Section 3. SUBSTITUTE PROVISIONS.**

A. Section 1-201, Chapter I, Article 2 of the Code of the City of Hesston is hereby deleted and amended to read as follows:

1-201. **GOVERNING BODY; CITY COUNCIL NUMBER; QUALIFICATIONS.**  
The City Council shall consist of five citizens of the City who, together with the Mayor, shall be qualified electors of the City of Hesston, Kansas under the Constitution of the State of Kansas. The City Council and the Mayor shall serve for a term of four years.

(C.O. 140-2016-040, Sec. 3)

B. Section 1-206, Chapter I, Article 2 of the Code of the City of Hesston is hereby deleted and amended to read as follows: 1-206. **PRESIDENT OF THE COUNCIL.** The City Council shall elect from its membership a President of the Council. The President of the Council shall preside in the absence of the Mayor. If a vacancy occurs in the office of the Mayor by death, resignation, removal from the City, removal from office, refusal to qualify or otherwise, the President of the Council shall become Mayor until the next regular City election and the vacancy created in the office of the Council Member becoming Mayor shall be filled by the governing body of the City. Thereupon, the City Council shall elect from its membership a new President of the Council.

(C.O. 140-2016-040, Sec. 3)

C. Section 1-208, Chapter I, Article 2 of the Code of the City of Hesston is hereby deleted and amended to read as follows:

1-208. **VACANCIES IN GOVERNING BODY; PROCEDURE; DEADLINE.** (a)  
No person shall be eligible for the office of Council Member who is not at

the time of election an actual resident of the City. If any Council Member moves from the City during such Council Member's term of office, the office shall be deemed vacant. In case of a vacancy in the office of a Council Member occurring by reason of resignation, death, removal from the City, removal from office, or by becoming Mayor by reason of being President of the Council when a vacancy occurs in the office of Mayor, the Mayor shall appoint, with the consent of a majority of the remaining Council Members, some suitable elector of the City to fill the vacancy until the expiration of the term of such office.

- (b) The procedure for filling vacancies in the governing body shall apply, provided such vacancies have been filled within 60 days of the vacancy. If a vacancy is not filled within 60 days of the vacancy, the Kansas statutory procedure to fill vacancies shall apply.

(C.O. 140-2016-040, Sec. 3)

D. Section 1-301, Chapter I, Article 3 of the Code of the City of Hesston is hereby deleted and amended to read as follows:

- 1-301. OFFICERS; APPOINTMENT; REMOVAL. The Mayor shall appoint, by and with the consent of the City Council, a Municipal Judge of the Municipal Court, a Chief of Police, City Clerk, City Administrator, City Treasurer, Director of Emergency Services, and City Attorney, all of whom shall serve a term of one year, unless specified by contract, and shall appoint such other officers and employees as the Mayor and City Council may deem necessary; and may retain a licensed professional engineer to act in the capacity of city engineer for specified duties. The terms of office for all City officers serving on the effective date of adoption of this ordinance shall end at the regular City Council meeting in February. The duties and pay of such officers shall be regulated by ordinance.

(C.O. 140-2016-040, Sec. 3)

E. Section 6-103, Chapter VI, Article I of the Code of the City of Hesston is hereby deleted and amended to read as follows:

- 6-103. ELECTIONS; TIMING; CONDUCT. (a) A regular City election shall be held on the Tuesday succeeding the first Monday in November of each odd numbered year.
- (b) At regular City elections, the candidates for council members receiving the two or three highest number of votes (as the case may be) and the candidate for Mayor receiving the highest number of votes shall be declared elected. Whenever there is a tie vote for two or more candidates and it is necessary to determine which candidate receives the office, the winner shall be determined by lot by the board of canvassers. The City Clerk shall, within three days after the canvass of the returns and determination by the board of canvassers of the persons elected, deliver to such persons a certificate of election, signed by him or her and sealed with the seal of the City; and such certificate shall constitute notice of election.

(C.O. 140-2016-040, Sec. 3)

F. Section 6-104, Chapter VI, Article I of the Code of the City of Hesston is hereby deleted and amended to read as follows:

6-104. COMMENCEMENT OF TERMS OF OFFICE; OATH OF OFFICE. (a)

The county election officer who conducts the City election shall promptly certify to the City Governing Body the determination of election results made by the county board of canvassers. The term of office shall commence on the second Monday in January following certification of the election. Terms otherwise expiring in April 2017 and April 2019 shall be extended to January of the next succeeding year in accordance with Kansas law.

(b) Every person elected or appointed to City office, before entering upon the duties of such office, shall take and subscribe an oath or affirmation as specified in K.S.A. 54-106, and amendments thereto, and every such oath or affirmation shall be filed with the City Clerk.

## APPENDIX B - FRANCHISES

### ORDINANCE NO. 010-1977-027

AN ORDINANCE GRANTING A FRANCHISE TO SATELLITE COMMUNICATION SERVICES, INC., A CORPORATION, EXISTING UNDER THE GENERAL BUSINESS LAWS OF THE STATE OF KANSAS, ITS SUCCESSORS AND ASSIGNS TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF HESSTON, KANSAS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE FRANCHISE PROVISIONS.

Section 1. This ordinance shall be known as "Hesston Community Antenna Television Franchise Ordinance."

Section 2. For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

(a) City - is the City of Hesston, State of Kansas.

(b) Council - is the city council of the city.

(c) Community Antenna Television System, - hereinafter referred to as CATV System or system means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

(d) Person - is any person, firm, partnership, association, corporation, company or organization of any kind.

(e) Grantee - is Satellite Communication Services, Inc., or anyone who succeeds it.

(f) Franchise - shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a CATV system in the city.

(g) Property of Grantee - shall mean all property owned, installed or used by a grantee in the conduct of a CATV business in the city under the authority of a franchise granted pursuant to this ordinance.

(h) Street - shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the city.

(i) Subscriber - shall mean any person or entity receiving for any purpose the CATV service of a grantee.

(j) Gross Subscriber Revenue - shall mean those monies received by grantee from its regular CATV subscribers during the operation of the regular CATV business within the city and shall not include any other income of the CATV system.

Section 3. Grant of Non-Exclusive Authority. There is hereby granted by the city to the grantee the non-exclusive right and privilege to construct, erect, operate and

maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places not laid out or dedicated, and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the city of a CATV system for the interception, sale and distribution of television and radio signals.

Section 4. Compliance with Applicable Laws and Ordinances. The grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of authority by the city.

Section 5. Territorial Area Involved. This franchise relates to the present city limits of the City of Hesston. Once construction is complete, grantee will build into newly platted annexed areas on the same basis as the utility companies.

Section 6. Indemnification. The grantee shall maintain, and by its acceptance of this franchise specifically agrees that it will maintain throughout the term of this franchise liability insurance insuring the city and the grantee with regard to all damages in the following amounts:

- (1) \$300,000 for bodily injury or death to any one person within the limit, however, of \$500,000 for bodily injury or death resulting from any one accident.
- (2) \$100,000 for property damage resulting from one accident.
- (3) Workmen's compensation coverage covering all of grantee's employees.

Section 7. Signal Quality Requirements. The grantee shall produce a picture, whether in black and white or in color, that shall be as good as the state of the art allows accompanied with proper sound on typical standard production TV sets in good repair.

Section 8. Operation and Maintenance of System. (a) The grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) The city manager of the franchising agency shall be the authority who shall have the primary responsibility for the continuing administration of the franchise and implementation of the complaint procedures.

(c) The grantee shall maintain a local business office or agent for the investigation and resolution of all complaints regarding cable television operations.

(d) Procedures have been adopted by the grantee and grantor for the investigation and resolution of all complaints regarding cable television service.

(e) Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the cable systems.

Section 9. Carriage of Signals - Program Alteration. Grantee shall receive and distribute television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the federal communications commission, and shall comply with all regulations of the federal communications commission regarding the carriage of the programming of any existing or future television broadcasting, program alteration, advertising, availability of local origination

and such other regulations hereinafter promulgated by the federal communications commission.

Section 10. Service. The grantee shall, upon request, provide a drop service at no cost to the following locations in the City of Hesston, for the purposes of public education and information; each city-owned building, parochial schools, and public schools. A drop service shall mean that one service connection shall be made available to each site specified with no internal wiring being required on behalf of the grantee, such internal wiring to be and remain the responsibility of the individual site concerned.

Section 11. Emergency Use of Facilities. In the case of any emergency or disaster, the grantee shall, upon request of the city, make its facilities available to the city for emergency use.

Section 12. Other Business Activities. (a) The grantee hereunder shall not engage in the business of selling, repairing, or installing television receivers, radio receivers, or accessories for such receivers within the City of Hesston during the term of this franchise. It is specifically provided, however, that in the event a public offering is made of the stock of the grantee or a parent company, this provision shall in no way inhibit minority shareholders from engaging in such businesses.

(b) This franchise authorizes only the operation of a CATV system as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of the grantee.

Section 13. Safety Requirements. (a) The grantee shall install and maintain its facility in accordance with the requirements of the National Electrical Safety Code as promulgated by the National Bureau of Standards and Department of the Interior.

(b) The grantee shall maintain a sufficient force of employees to provide adequate and prompt service for its facilities.

Section 14. New Developments. It shall be the policy of the city to liberally amend this franchise, upon application of the grantee, when necessary to enable the grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently, or economically to serve its customers.

Section 15. Conditions on Street Occupancy. (a) All transmission and distribution structures erected by the grantee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public areas and places.

(b) In case of grantee's disturbance of any street, sidewalk, alley or public area, the grantee shall, at its own expense, replace and restore such street, sidewalk, alley or public area.

(c) The grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 15 days advance notice to arrange for such temporary wire changes.

(d) The grantee shall have the authority to trim trees upon and overhanging the streets, alleys, sidewalks, and public ways and places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

(e) In all sections of the city where the cables, wires, or other like facilities of public utilities are placed underground, the grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits.

Section 16. Preferential or Discriminatory Practices Prohibited. The grantee shall not, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage.

Section 17. Removal of Facilities Upon Request. Upon termination of service to any subscriber, the grantee shall remove all its facilities and equipment from the premises upon request.

Section 18. Transfer of Franchise. The grantee shall not transfer this franchise to another person without prior approval of the city which approval shall not be unreasonably withheld.

Section 19. Filings and Communications with Regulatory Agencies. Copies of all petitions and applications submitted by the grantee to the federal communications commission or any other federal or state regulatory commission shall be submitted simultaneously to the city.

Section 20. City Rights in Franchise. (a) The city shall have the right to inspect the maps, plans and other like materials of the grantee at any time during normal business hours.

(b) The city shall have the right to supervise all construction or installation work performed subject to the provisions of this franchise and make such inspections as are reasonable to insure compliance with the terms of this franchise and other pertinent provisions of law.

(c) In the event of cancellation or expiration of this franchise, and there is no renewal thereof, grantee shall have six months to dispose of and/or remove its facilities from the public right-of-way.

(d) After the expiration of the term for which this franchise is granted, the grantee shall have the right to continue to operate and maintain the CATV system at its option pending the decision of the city as to the renewal of the franchise.

Section 21. Plans and Reports. (a) The grantee shall file annually with the city clerk, not later than 90 days after the end of the grantee's fiscal year, a verification by a certified public accountant, as to the gross subscriber revenue of grantee for the preceding fiscal year, reflecting in such verification the amount of the franchise fee resultant therefrom.

Section 22. Payment to the City. The grantee, after the system is operational, shall pay to the city annually an amount equal to three percent of the gross subscriber



revenues derived from the grantee's operation of its regular CATV system within the city during the year.

Section 23. Forfeiture of Franchise. In addition to all other rights and powers pertaining to the city by virtue of this franchise or otherwise, the city reserves the right, following a public hearing to which grantee is an indispensable party, to terminate and cancel this franchise and all rights and privileges of the grantee hereunder in the event that the grantee violates any rule, order, or determination of the city or city council made pursuant to this franchise, except where such violation is without fault or through excusable neglect.

Section 24. Duration of Franchise. (a) This franchise shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of 15 years.

(b) Grantee is granted an option to extend the aforementioned term of this franchise for a period of 15 years.

Section 25. Erection, Removal, and Common User of Poles. (a) No poles shall be erected or removed by the grantee without prior approval of the city engineer.

(b) Where the city or a public utility service of the city desires to make use of the poles or other wire-holding structures of the grantee, such use will be allowed at the same price per pole as grantee is paying the utility companies, provided such use can be made without interruption to grantee's facility. All change-outs shall be at the expense of the proposed joint user and subject to approval of grantee's engineer.

Section 26. Number of Channels. The grantee's cable distribution system shall be capable of carrying at least 20 television channels. Further, the grantee shall make available upon the request of the city council one channel for educational TV and one channel for any other non-commercial service for the benefit of the inhabitants of the city.

Section 27. Rates. The following base rates and charges are hereby authorized for service under this franchise to be effective upon the date of the signing hereof. The rates shall be guaranteed for a period of three years, except that they shall be adjusted on the anniversary date of this franchise based on increases in the private transportation index of the national consumer price index as indicated by the U.S. government. At the expiration of the third anniversary year of this franchise, grantee shall receive an increase in its basic residential rate to bring into approximately the national average rate for services of a similar nature.

Thereafter increases in the rate schedule may be made by the grantee providing the city is notified thereof in writing 45 days prior to the proposed change. If no action is taken within the 45 days, the proposed change shall be effective immediately thereafter. If the city objects to the proposed change, it may during the aforementioned time limit hold a public hearing affording due process to which the grantee is an indispensable party. Following the hearing the city must act affirmatively or negatively within 60 days of the date of the meeting. If the city fails to act, the proposed increase shall become effective. If the city should act negatively upon the proposed increase, it must at that time notify the grantee in writing stating its reasons.

#### Residential Rates

- (a) Original connection charge, single television outlet (except that if underground cable is used to connect from pole to house, additional charge of 15¢ per foot will be made) - \$20.00;
- (b) Additional television outlets, each (installation) - \$7.50;
- (c) Relocating outlet charge, each - \$7.50;
- (d) Reconnection charge (when customer has previously subscribed to service) - \$7.50;
- (e) Monthly service charge, single television outlet - \$7.75;
- (f) Additional television outlets, each (monthly) - \$1.50.

Commercial Rates

- (a) Installation Charges:  
Hotels, motels, apartments & similar mass receivers, single television outlet - \$10.00;  
Wiring and installation of additional units  
Actual cost of materials and labor
- (b) Monthly Service Charge  
First outlet - not to exceed two - \$5.00;  
Additional outlets, 3-50 units each - \$4.50;  
51-over units, each - \$4.00.
- (c) Relocating outlet charge, each - \$5.00.
- (d) Reconnection charge (when customer has previously subscribed to service) - \$5.00.

Where there is more than 150 feet of distance from cable to connection of service to subscriber, grantee will charge for installation on the basis of costs of material and labor (not to exceed 50¢ per foot) for the footage over 150 feet.

If in the future, the State of Kansas regulates the rates of the grantee for the service provided for in this franchise, this section shall be of no effect during such state regulation to the extent of any conflict therewith.

Section 28. Pole Use Fee. The grantee shall negotiate a contract with the owner of the poles to which grantee attaches its transmission cable or devices.

Section 29. Publication Costs. The grantee shall assume the cost of publication of this franchise if such publication is required by law.

Section 30. Construction. (a) The grantee shall accomplish significant construction within one year after receiving commission certification, and shall thereafter reasonably make cable service available to a substantial percentage of the franchise area each year as required by Section 76.31(a)(2) of the rules of the federal communications commission which apply in such cases.

(b) The grantee's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the franchising authority as part of a full public proceeding affording due process.

(c) Modification. Any modification of the provisions of Section 76.31 of the rules and regulations of the federal communications commission shall be incorporated into this franchise agreement within one year of the adoption of the modification or at the time of franchise renewal, whichever occurs first.

(07-20-77)

## ORDINANCE NO. 010-2000-124

AN ORDINANCE, GRANTING TO KANSAS GAS AND ELECTRIC COMPANY, A KANSAS CORPORATION AND WHOLLY OWNED SUBSIDIARY OF WESTERN RESOURCES, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS HEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Hesston, Kansas, and its inhabitants, there is hereby granted to Kansas Gas and Electric Company, a Kansas corporation and wholly owned subsidiary of Western Resources, Inc., a Kansas corporation, hereinafter sometimes designated as company, the company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, into and through which it has built transmission lines, the right, privilege, and authority for a period of 10 years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of the city, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing electricity for all purposes of the City of Hesston, Kansas, and its inhabitants, and through the city and beyond the limits thereof; to obtain the electricity from any source available, and to do all things necessary or proper to carry on the business in the City of Hesston, Kansas.

Section 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or revenue taxes, the company shall pay to the city during the term of this franchise four percent of its gross cash receipts from the sale of electric energy within the corporate limits of the city, such payment to be made monthly for the preceding monthly period. Gross cash receipts shall not include other operating revenues received by the company, which are not related to the sale of electric energy. Other operating revenue include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges.

Section 3. That company, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting 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 of Hesston, Kansas, from any and all damage, injury, and expense caused by the negligence of the company, its successors and assigns, or its or their agents or servants.

Section 4. That within 20 days from and after the passage and approval of this ordinance, company shall file the same with the State Corporation Commission.

Section 5. After the filing of this ordinance with the State Corporation Commission, company shall file with the city clerk of the City of Hesston, Kansas, its unconditional written acceptance of this ordinance. The ordinance shall become effective and be in force and shall be and become a binding contract between the

parties hereto, their successors and assigns, from and after the expiration of 60 days from its final passage, approval and publication as required by law, and acceptance by the company.

Section 6. That this ordinance, when accepted as above provided, shall constitute the entire agreement between the city and company relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

Section 7. This franchise is granted pursuant to the provisions of K.S.A. 12-2001.

Section 8. That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

Section 9. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude Kansas Gas and Electric Company, a Kansas corporation and wholly owned subsidiary of Western Resources, Inc., a Kansas corporation, from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the State Corporation Commission's ruling.

Section 10. A 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, provided, however, that the franchise may be assigned by company without action by the city to any creditworthy entity which succeeds to all or substantially all of the electric utility business of the company. In the event of such assignment to a successor, company shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned.

(11-13-00)

## **ORDINANCE NO. 010-2001-127**

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF EASTERN KANSAS D/B/A SPRINT A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF HESSTON, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

United Telephone Company of Eastern Kansas, d/b/a/ Spring Grantee, a corporation organized under the laws of the State of Delaware, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other public places of the City of Hesston, grantor; and to construct, lay, maintain, and repair such cable as grantee, its successors and assigns, may require, under those streets, avenues, boulevards, alleys, and other public places for the purpose of such business under the following terms and restrictions.

Section 1. This grant shall be effective in accordance with Section 12 below and shall continue for a term of two years from its effective date, and for successive terms of like duration unless written notice is given by either the grantor or the grantee to the other 120 days or more prior to the expiration of the initial term or any successive term of its intention to terminate the same at the expiration of the then current term.

Section 2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the city and its inhabitants, rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

Section 3. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such streets, avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public improvements and, if such be injured, grantee shall repair any damages caused to the satisfaction of the mayor of the city and, in default thereof, the city may repair such damage and charge the cost to grantee.

Section 4. The poles of grantee, its successors and assigns, shall be placed and erected in such a manner so as not to interfere unreasonably with the orderly conduct of the business and rights of any other public service corporation having a right or franchise to operate its business in the city.

Section 5. Grantee shall remove, raise, or adjust its aerial plant, after 48 hours notice by a properly authorized city official, for the purpose of permitting the moving of houses or other structures along the streets of the city. The person or persons for whose benefit such telephone plant is removed, raised, or adjusted, however, shall first secure proper permission from the city for the movement and agree to pay grantee for its related costs and damages. If desired, an advance deposit from the mover may be required by grantee.

Section 6. Permission is hereby granted to grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the city so as to prevent the franchise of such trees from coming into contact with grantee's wires and cables. All such trimming will be done under the supervision and direction of any city official to whom such duties have been or may be delegated.

Section 7. In consideration for rights and privileges herein granted, grantee shall pay to the city in arrears, five percent of the annual gross receipts from billings for local exchange service rendered wholly within the corporate limits of the city. The gross receipts are for the regular basic local exchange service rates to customers or subscribers for telephone services in the city, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Such payment shall be made in two installments on or before the 1<sup>st</sup> day of January and on the 1<sup>st</sup> day of July of each year during the term of this ordinance. The city agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

Section 8. Nothing herein shall affect any prior or existing rights of grantee to maintain a telephone company within the city.

Section 9. The franchise and all rights hereunder may be assigned by the grantee, as well as all succeeding grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties, and liabilities of the grantee hereunder.

Section 10. The recovery of the charges from grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the city. The obligation of grantee to pay compensation under this ordinance is contractual, the city makes no requirements as to the method grantee uses to recover the payments.

Section 11. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

Section 12. This ordinance shall be effective at the expiration of 65 days from the date of its final passage.

Section 13. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting grantee a franchise, or while the city and grantee are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

Section 14. If any portion of this ordinance for any reason is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.  
(07-09-01)

**ORDINANCE NO. 010-2003-135**

AN ORDINANCE AMENDING ORDINANCE NO. 010-2001-127 RELATING TO A FRANCHISE AGREEMENT WITH SPRINT PURSUANT TO K.S.A. 12-2001.

Section 1. As used in this ordinance, the term gross receipts shall mean:  
Gross Receipts means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following:

- (a) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls;
- (b) Recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers;
- (c) Local directory assistance revenue;
- (d) Line status verification/busy interrupt revenue;
- (e) Local operator assistance revenue; and
- (f) 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 a telecommunications local exchange service provider 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 in the city.

(10-15-03)

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