

(CLEAN)132019

(First Published in *The Wichita Eagle*, on April 29, 2016)

ORDINANCE NO. 50-182

AN ORDINANCE REPEALING SECTIONS 10.20.010 AND 10.20.080 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO EXCAVATIONS IN THE RIGHT OF WAY.

AN ORDINANCE CREATING SECTION 10.20.055 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO EXCAVATIONS IN THE RIGHT OF WAY.

AN ORDINANCE ADMENDING SECTIONS 10.20.020, 10.20.030, 10.20.040, 10.20.050, 10.20.060, 10.20.070, 10.20.090, 10.20.100, 10.20.110, 10.20.120, 10.20.130, 10.20.140, 10.20.150, 10.20.170, 10.20.180 AND 10.20.190 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO EXCAVATIONS IN THE RIGHT OF WAY AND REPEALING THE ORIGINALS THEREOF.

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

SECTION 1. Section 10.20.010 of the Code of the City of Wichita, Kansas, is hereby repealed:

SECTION 2. Section 10.20.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Applicability of Chapter.”** Any Excavation shall be subject to the provisions of this Chapter unless there is a written agreement otherwise.

SECTION 3. Section 10.20.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Permit required.”** Except for licensed and bonded contractors holding contracts to do work for the City, it is unlawful for any Person to make any Excavation in any Public place unless such Person has first obtained a permit from the City Engineer.

SECTION 4. Section 10.20.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Persons eligible for permits.”** The following Persons shall be eligible to secure permits to cut sidewalks or pavements, and to make Excavations in the City Right of way.

(1) CORPORATIONS. Any municipally operated utility or any corporation having a franchise or agreement to operate in the City;

(2) PLUMBERS AND DRAIN LAYERS. Plumbers or master drain layers with the current applicable license and surety bond in the sum of five (5,000) thousand dollars on file with the City Engineer;

(3) OTHER PERSONS; BOND, ETC, REQUIRED. Any other Person provided that such Person shall first file and maintain with the City Engineer, a surety bond in the sum of five (\$5,000) thousand dollars as hereinafter provided. Such bond shall require the principal to comply with all applicable laws, rules and ordinances. Such bond shall also require the principal will defend and hold the City harmless from any and all damages. Such liability on the part of the principal and surety shall continue until a release has been received from the City as provided in this Chapter.

SECTION 5. Section 10.20.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Application for permit; fees, issuance.”** Permits required by this Chapter may be issued to any municipally operated utility or public utility corporations having a franchise or agreement to operate in the City, upon application and subject to approval by the City Engineer. Such Person will be invoiced by the City with payment due within thirty-six (36) days of the invoice.

Any other eligible Person, other than those expressly excepted in Section 10.20.030, desiring a permit shall first make application to the City Engineer and shall pay a processing fee per block for cutting a paved surface in City Right of way as listed in Section 10.34.010, plus any repair costs incurred by the City. The City Engineer, at the City Engineer’s sole discretion, may require Excavation by trenchless methods.

A surcharge fee is assessed when an Excavation is made in any paved street or alley on which the pavement or resurfaced pavement is less than five (5) years old. The surcharge fee is five (5) percent of the permit fee plus the repair costs for each un-elapsed month, or fraction thereof, of the five (5) year period.

The permit fee, including any applicable surcharge fee, combined with the costs to the City for permanently repairing the pavement cut, constitutes the total permit fee.

A processing fee as listed in Section 10.34.010 shall be required for a permit to excavate in any unpaved City Right of way for the purpose of laying, repairing, or removing any main pipes, underground wires or other conduits. One permit shall be required for each block or portion of a block if the work is done with continuity. For the purpose of connecting, repairing or removing service pipes, underground pipes, underground wires or other conduits, or for any other purpose

not specifically mentioned herein, one permit shall be required for each connection unless such connection is made at the time of laying the main.

Permits are nonrefundable and nontransferable.

SECTION 6. Section 10.20.055 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Refusal of permits and/or penalty for failure to obey rules and regulations.”** The City Engineer shall refuse permits to contractors who fail or refuse to obey all rules and regulations necessary in the enforcement of this Chapter. Any party, with or without a permit, shall be liable for all costs associated with the repair of the Excavation, including exploratory Excavation, when performed.

A penalty of double the cost of the permit will be charged for failure to obtain a permit prior to the beginning of work that will be performed on City Right-of-Way.

Any permits not paid within thirty-six (36) days after the date of invoice shall be subject to a penalty equal to the amount of the original permit fee. All such amounts not paid within sixty (60) days shall be subject to a penalty equal to four (4) times the original permit fee. All such amounts not paid within ninety (90) days will be turned over to the Permittee’s bonding company for the amount due plus four (4) times the original permit fee.

Any costs for a repair of an Excavation not paid within thirty-six (36) days after the date of invoice shall be subject to a penalty of ten (10) percent. Any repair costs not paid within sixty (60) days shall be subject to another ten (10) percent penalty. Any amounts owed by the Permittee may be offset against any amounts due or payable from the City, including withholding funds of any awarded project to reimburse the City for any outstanding debts. All such amounts not paid within ninety (90) days will be turned over to the Permittee’s bonding company for the amount due.

SECTION 7. Section 10.20.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Manual on Uniform Traffic Control Devices; compliance required.”** Any Person making Excavations or performing any other work in public Right of way shall comply with the latest edition of the “Manual on Uniform Traffic Control Devices,” as published by the Federal Highway Administration, U.S. Department of Transportation.

SECTION 8. Section 10.20.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Backfilling—Generally; removal of surplus material.”** All Excavations where sidewalk or pavement has been cut shall either be backfilled with clean sand, which shall be flushed and vibrated into place, or shall be backfilled with excavated material dampened and thoroughly compacted in six (6) inch layers until its density is equal to at least one hundred (100) percent of the density of the adjacent undisturbed soil. For vehicular pavements, the Excavation shall be compacted to within eight (8) inches of the surface; for pedestrian pavements, the Excavation shall be compacted to the bottom of the final sidewalk. Use of appropriate backfill material, including flowable fill, may be required by the City Engineer.

Temporary patches shall have a thickness equal to the full depth of the adjacent pavement and shall be compacted flush with the adjacent surfaces. Within twenty-four (24) hours, all surplus excavated material shall be removed from the location.

SECTION 9. Section 10.20.080 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 10. Section 10.20.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same—Excavations within four (4) feet of existing or planned pavement, etc.”** Any Excavation in the Right of way that is less than four (4) feet from any existing or planned pavement, Curb, or sidewalk shall be backfilled and compacted to a density of at least one hundred (100) percent of the adjacent undisturbed soil. Use of appropriate backfill material, including flowable fill, may be required by the City Engineer.

SECTION 11. Section 10.20.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same—Extra pavement removal required beyond edges of trenches or Excavations.”** The pavement repair of all street pavement cuts shall include additional pavement removal for a minimum distance of one (1) foot beyond the edges of the dirt Excavation. If such dirt cut is made within four (4) feet of an existing pavement joint or patch, Excavation shall extend to such joint or patch. Excavations should not include gutter pavement unless necessary. If gutter pavement is disturbed by actual Excavation or from compromise of the subgrade/lateral support as determined by the Engineer, such Curb shall be replaced. Such Excavation of pavement shall be done by use of a pavement saw and only after the previous dirt Excavation has been backfilled. The dimensions of a pavement cut, as given on the permit, shall include the extra Excavation of pavement beyond

the edges of the dirt Excavation. All material and workmanship shall conform to specifications on file in the office of the City Engineer, including the requirements of full-depth sawing.

SECTION 12. Section 10.20.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same—With excavated material.”** All Excavations in any used or traveled portion of any unimproved street or alley, except as provided in the preceding section, may be backfilled with the excavated material; provided, that it shall be consolidated by mechanical compactor in six (6) inch layers to a density no less than one hundred (100) percent of the surrounding undisturbed soil. Surplus material shall be trimmed and removed.

SECTION 13. Section 10.20.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Duty of Person making Excavations.”** It shall be the duty of any Person making an Excavation to maintain all Excavations in a safe condition. All Excavations shall be marked by the Person performing the Excavation with a clearly identifiable contact name and telephone number. The Person shall confirm the contact name and telephone number are still present at the Excavation every five (5) days. Each failure to comply with this section is a misdemeanor, which may be issued directly to any agent of the Person performing or having the Excavation performed.

SECTION 14. Section 10.20.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Work to continue without interruption where Excavation made on expressways, freeways, arterial streets.”** Any Person having a project which requires an Excavation in a paved street classified by the City as an expressway, freeway, or arterial street, shall work continuously and diligently, without interruption and without regard for regular hours of work on the project, until the completion of the same, unless such interruption is approved by the Traffic Engineer before commencement of the project.

SECTION 15. Section 10.20.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Liability of Permittee for negligent acts, etc.; City to be saved harmless.”** Any Person making Excavations in the public Right of way shall at all times be liable for damages concerning the Excavation prior to the time the cut is permanently repaired and area restored, as provided for in this Chapter. Such Person shall defend and hold the City harmless from all suits, claims or

judgments for damages growing out of any act of commission or omission on the part of any Person performing work under this Chapter.

SECTION 16. Section 10.20.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Traffic Control.”** Any Person performing work in the Right of way shall comply with the latest edition of the “Manual on Uniform Traffic Control Devices” until the City's contractor completes permanent repairs.

SECTION 17. Section 10.20.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Contracting with paving contractor to do work.”** Any Person having a project necessitating an Excavation on any portion of paved City Right of way shall first obtain a pavement cut permit from the City Engineer. Permanent repair of the cut shall be done by the City's contractor under the inspection of the City Engineer, and all material and workmanship will conform to the specifications on file in the office of the City Engineer. The Person making the cuts shall be liable for the cost of repair of such cuts and for maintenance of traffic control as provided in the latest edition of the “Manual on Uniform Traffic Control Devices.” The Person will also comply with all applicable provisions of the Americans with Disabilities Act.

The Person making the cut shall also be liable for a period of ten (10) years for the maintenance of the repair, including its complete removal and replacement if the condition of the repair is such, in the opinion of the City Engineer, as to constitute a threat to the integrity or usability of the paved surface.

The City Engineer may require the Person making the cuts to contract with a paving contractor for repair of such cuts. The repair will be under the inspection of the City Engineer and all material and workmanship will conform to the specifications on file in the office of the City Engineer. The Person making the cuts shall be liable for cost of repair of such cuts, the costs of inspection, and responsible for traffic control as provided in the latest edition of the “Manual on Uniform Traffic Control Devices.” In no case shall any Person at any time or under any circumstance be allowed to perform any permanent repairs of any type or nature with regard to the repair of an Excavation without the written approval of the City Engineer, which shall be at the City Engineer’s sole discretion.

SECTION 18. Section 10.20.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Warranty of Restoration and Repairs.”** Any Person performing any dirt cut or pavement cut shall be solely responsible for the performance of the backfill for a period of five or ten years, respectively, including all related costs.

SECTION 19. Section 10.20.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Right of City to civil action to recover permit fees.”**

In addition to the penalty prescribed in Section 1.04.060, the City may recover in a civil action in any court of competent jurisdiction, the amount of the permit fees, late fees, and charges for any damages, plus reasonable attorney’s fees. No property of such debtor shall be exempt from forced sale under any process of law such indebtedness, except such exemptions as allowed by the Constitution and the laws of this state.

SECTION 20. The original of Sections 10.20.010, 10.20.020, 10.20.030, 10.20.040, 10.20.050, 10.20.060, 10.20.070, 10.20.080, 10.20.090, 10.20.100, 10.20.110, 10.20.120, 10.20.130, 10.20.140, 10.20.150, 10.20.170, 10.20.180 and 10.20.190 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 20. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas this 26th day of April, 2016.

\_\_\_\_\_  
Jeff Longwell, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Jennifer Magaña  
Director of Law and City Attorney