

ORDINANCE NO. 7462

AN ORDINANCE AMENDING VARIOUS PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN; CREATING A REGISTRATION AND PERMIT PROCESS FOR FACILITIES WORK IMPACTING VEHICULAR OR PEDESTRIAN TRAFFIC OR REQUIRING EXCAVATION OF THE CITY RIGHTS-OF-WAY.

WHEREAS, the City of Manhattan is the chief steward of the rights-of-way within its jurisdiction, which are a limited resource designed to serve the public as well as the persons whose equipment are located thereon; and,

WHEREAS, the citizens of the City have substantially invested in the building and maintenance of the City's streets and rights-of-way for public use; and,

WHEREAS, a significant cause for the early and excessive deterioration of the rights-of-way is the frequent excavation by persons whose equipment are located thereon; and,

WHEREAS, to provide for the health, safety and well-being of its citizens, as well as the structural integrity of its streets and the use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair; and,

WHEREAS, further, facilities work in the rights-of-way may interfere with or disrupt vehicular or pedestrian traffic, creating inconvenience or safety risks for the citizens; and,

WHEREAS, the governing body desires to exercise its police power to manage traffic controls and the excavation of the rights-of-way by persons whose equipment are located thereon, in order to protect the investment of public funds and the rights-of-way, and to preserve the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS, AS FOLLOWS:

Section 1. That Article IV of Chapter 30 of the Code of Ordinances of the City of Manhattan, Kansas, shall be repealed in its entirety, and shall be replaced with new Article IV, to read as follows:

Article IV Facilities Work in the Rights-of-Way

Sec. 30-56. Purposes.

The purposes of this article are to manage traffic controls within the rights-of-way and to regulate the frequent and repeated excavation of the rights-of-way during facilities work, in order to:

- (a) Establish, on a competitively neutral, nondiscriminatory basis, rules and regulations concerning management of the public rights-of-way;

- (b) Protect and preserve the public investment in, and use of, the limited resource of the rights-of-way;
- (c) Maintain the structural integrity of city infrastructure that may be impacted by frequent and repeated excavations;
- (d) Allow rights-of-way users to install and maintain their equipment within the rights-of-way in a manner that minimizes disruption to the public, provides for public safety, and helps to preserve the structural integrity of the city infrastructure; and,
- (e) Protect the public safety, health and welfare.

Any use of the rights-of-way for facilities work shall always be subject to and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city. Each occupant for facilities work shall comply with all laws, rules, and regulations governing the use of the public rights-of-way.

Sec. 30-57. Application to franchisees.

This article shall apply to the franchisees of the city. If a franchisee's ordinance contains a provision that conflicts with this article, the more stringent provision shall control.

Sec. 30-58. Administration.

The city engineer, or his/her designee, may adopt rules and regulations to implement and administer the requirements of this article, and to regulate the construction, maintenance and repair of facilities in the public rights-of-way. Such rules and regulations shall be contained in the document that serves as the *City of Manhattan, Kansas, Standard Specifications*. The construction, maintenance, and repair of facilities shall be in accordance with all applicable ordinances and those *City of Manhattan, Kansas, Standard Specifications*.

Sec. 30-59. Definitions.

For the purposes of this article, the following terms shall mean:

City infrastructure shall mean any pavement for streets, sidewalks, alleys, paths; any curbs, gutters, drainage structures, storm sewers, swales, ditches, sanitary sewers, manholes, water mains, water service lines, water meters, valves, street lights, conduits, traffic signals, cables, conduits, panels, irrigation systems, bridges, culverts, signs or similar infrastructure in which the City holds a property interest.

Emergency shall mean a condition that poses a clear and immediate danger to life or health, or of a significant loss of property; or that requires immediate repair or replacement in order to restore service to a customer.

Excavate or excavation shall mean and include any act of cutting, digging, excavating, tunneling, boring, grading, removing or other alteration of the surface or subsurface material or earth.

Facilities shall mean any lines, pipes, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless communication facilities, and other similar equipment, owned by any entity other than the city, that are installed, designed or used for the transmission or distribution of any utility, service or commodity, installed below or above ground within the city rights-of-way, whether used privately or made available to the public. Provided that, “facilities” shall not include any private individual service connections or private irrigation systems designed to serve only the real estate parcel upon which such systems are located.

Facilities work shall mean any work related to facilities, including but not limited to installation or any change, replacement, exploratory location, relocation, removal, alteration, maintenance or repair of existing facilities.

Occupant shall mean any person or entity that occupies, uses, or seeks to use or occupy, the rights-of-way for facilities use or work. If the owner of any facilities leases, subleases, assigns or licenses the control or responsibility of such facilities to another person or entity, then the lessee, sublessee, assignee or licensee shall be also be deemed an occupant for that portion of the facilities. *Occupant* shall also mean any person or entity that performs facilities work within the rights-of-way, regardless of whether such person owns or uses such facilities.

Rights-of-way shall mean the surface and area below or above streets, alleys, bridges, roads, highways or lanes in which the city has a dedicated or acquired right-of-way interest in the real property. This definition shall include the utility easements immediately abutting the rights-of-way, wherein the city now or hereafter acquires the right and authority to locate or permit the location of city infrastructure.

Sec. 30-60. Occupant registration required.

- (a) It shall be unlawful for any occupant, or person on behalf of such occupant, to conduct facilities work in the rights-of-way without first being registered with the city. If an occupant has a valid franchise agreement with the city, the franchise agreement shall be considered registration pursuant to this section.
- (b) Each registration shall be valid for the calendar year in which it was approved and will expire on December 31 of such year, unless it expires earlier pursuant to Section 30-61.
- (c) Each occupant who conducts facilities work in the rights-of-way shall file an annual registration statement on the form provided by the city. Such registration shall be deemed approved if the occupant provides the following information:
 - (1) Identity and legal status of registrant, including related affiliates that are or may conduct facilities work addressed by this article.
 - (2) Name, address, telephone number, e-mail address and fax number of the contact person responsible for the accuracy of the registration statement. This person shall also serve as the registrant's agent and further be

responsible for the distribution of any information pursuant to this article to the appropriate person in the registrant's organization.

- (3) List of contact persons, including the name, address, telephone number, e-mail address and fax number for the following areas: right-of-way maintenance, right-of-way construction, administration, and legal.
- (4) Name, address, telephone number, e-mail address and fax number of the local representative of registrant or operations center who shall be available at all times to act on behalf of registrant in the event of an emergency.
- (5) Nonproprietary description of registrant's existing or proposed facilities within the city.
- (6) Description of facilities works that registrant intends to offer or provide, or is currently offering or providing, to any person or entity in the city.
- (7) Certificates of insurance and bonding that comply with Section 30-61.
- (8) Such other information as may be required by the city reasonably related to the use of the public right-of-way.

Any material changes or modifications to the certificates of insurance, bonding, or other information that affects the registrant's activities in the public rights-of-way shall be submitted to the city within 30 days of such change or modification.

Sec. 30-61. Occupant requirements; surety bonds and insurance

- (a) Each occupant that maintains more than one thousand (1,000) lineal feet of facilities within the public rights-of-way shall keep complete and accurate maps and records of the location of their facilities.
- (b) If an occupant has a valid franchise agreement with the city and such franchise agreement requires the occupant to have and maintain specific insurance and performance bonds, such occupant shall provide proof thereof to the city in compliance with the franchise ordinance. If an occupant has a valid franchise agreement with the city but such franchise agreement does not require the occupant to have and maintain specific insurance or performance bonds, such occupant shall meet the requirements of subsection (c) that are not addressed in the occupant's franchise agreement.
- (c) Each occupant shall submit proof of the following with its registration, and each occupant shall maintain the following throughout the registration period. If the bond or the insurance policies lapse or are cancelled, then the occupant's registration expires upon the date the occupant no longer meets the bonding or insurance requirements.
 - (1) Each occupant shall post a surety bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the State of Kansas, ensuring appropriate and timely performance in the construction and maintenance of facilities located in the rights-of-way. The amount of the performance/maintenance bond shall be \$50,000 and its term shall remain valid for the term of the occupant's annual registration.
 - (2) Each occupant shall be required, as a condition of its registration, to procure and maintain for the duration of the registration, insurance of the type and amount not less than the minimums set by the city engineer in the *City of*

Manhattan, Kansas, Standard Specifications. This provision may be satisfied by supplying the city a letter of self-insurance and appropriate documentation verifying the occupant's ability to provide no less than the minimum coverage required.

Sec. 30-62. Facilities work permit required.

- (a) It shall be unlawful for an occupant to perform facilities work in the rights-of-way, or cause the same to be done, prior to the issuance of a valid facilities work permit issued by the city for such facilities work project, if such project involves any of the following:
 - (1) Excavation within, or of, the rights-of-way;
 - (2) Any closure of a street, road, alley or highway, or any portion thereof; or,
 - (3) Obstruction of vehicular or pedestrian traffic.
- (b) It shall not be a violation of subsection (a) for a person to perform facilities work in the rights-of-way, or to cause the same to be done, in the event of an emergency, if the following requirements are met:
 - (1) The occupant conducting such work, or causing such work to be done, notifies the city within five (5) business days that such work was performed and apply for the any permits from the city; and,
 - (2) The emergency work is performed in compliance with all applicable laws, rules and regulations.

Sec. 30-63. Facilities work permit application, fee and issuance.

- (a) A facilities work permit application shall be submitted to the city engineer on the form provided by the city, along with the application fee of \$200, at least fourteen (14) calendar days prior to the start of the requested facilities work. The city engineer shall process a complete application within a reasonable time frame, and in compliance with the timeframes required by state and federal law, if any, for such application.
- (b) Each permit application may include the facilities work to be performed by the applicant within an area up to 400 lineal feet, or 160,000 square feet.
- (c) Each permit shall be valid for the specific days and/or time period stipulated in the permit, as determined by the city engineer, but in no case shall the permit term exceed 60 days. Provided that, the city engineer may approve an extension of the permit term, for an extension term not to exceed sixty days, for a fee of \$100 for each extension period.
- (d) If an applicant is a franchisee with a permit process specific to its franchise, the city engineer may consolidate the franchise's permit processes with this permit.
- (e) The city engineer shall review the permit application and issue a permit if the applicant has met the requirements of this article. The city engineer's decision shall be based upon the following:
 - (1) Completion of the form provided by the city, including all supporting materials as required by all applicable codes, rules and regulations;
 - (2) Receipt of the application fee;
 - (3) Proper occupant registration of applicant;
 - (4) Designated project commencement and termination dates;

- (5) Sufficient description of facilities work to be done in the rights-of-way;
 - (6) Sufficient schedule and coordination information;
 - (7) Plan for proper restoration or protection of the rights-of-way;
 - (8) Location and route of applicant's facilities and city infrastructure in the rights-of-way, if required by the city engineer;
 - (9) Compliance with the facilities work requirements, applicable codes, rules and regulations;
 - (10) Coordination plan with existing facilities, if required by the city engineer;
 - (11) Traffic control plans, if required by the city engineer; and,
 - (12) Other information as required to protect public health, safety and welfare.
- (f) The city engineer may impose reasonable conditions upon the issuance of a permit that fulfill the purposes of this article.
- (g) The city engineer may deny a permit request for any of the following reasons:
- (1) The application is not complete;
 - (2) The application fee has not been paid;
 - (3) The fee for the city to perform the street or alley cut repairs has not been paid;
 - (4) The applicant has failed to return the rights-of-way to an acceptable condition under previous permits issued within the immediately preceding 24 months;
 - (5) The applicant has failed to reimburse the city for prior repairs to the rights-of-way caused by applicant's damage to the rights-of-way;
 - (6) The application violates a provision or requirement of this article;
 - (7) The applicant is not a registered occupant;
 - (8) The applicant does not meet the surety bond or insurance requirements set forth in Sec. 30-63; or,
 - (9) The facilities work will not meet the facilities work requirements.

Sec. 30-64. Facilities Work Requirements.

- (a) All facilities work shall be conducted in a manner that minimizes the disruption to the use of the rights-of-way and to vehicular and pedestrian travel. The occupant shall take appropriate measures to redirect or serve vehicular or pedestrian travel in the affected rights-of-way, in accordance with the Manual of Uniform Traffic Control Devices, and as directed by the city engineer.
- (b) Except as specifically permitted by a franchise agreement approved by the city, all newly constructed facilities shall be located underground. The occupant shall comply with all requirements of the city relating to underground facilities. Above ground facilities shall comply with all applicable zoning regulations.
- (c) The facilities work shall not obstruct access to any fire hydrant without the prior written approval of the city engineer and the director of fire services.
- (d) The rights-of-way shall be restored to its previous condition following the conclusion of the facilities work. Unless the city engineer approves the permitholder to perform street or alley cut repairs, which shall be performed consistent with the city engineer's rules and regulations, the city shall perform all street or alley pavement cut repairs. The permitholder shall be responsible for all costs of pavement replacement and backfilling, and shall be

- responsible for maintaining the approved traffic controls until the city completes the restoration. The city shall provide the facilities or owner with an estimate for all pavement repairs prior to the facilities work, and the permitholder shall pay the estimated amount prior to conducting its facilities work. The city's costs shall be on a time and materials basis and shall include a minimum 15% administration charge. The city will provide the permitholder with an invoice upon completion of its work, and the permitholder shall pay any additional amount due. The city shall refund any unused amount if the cost of the actual work was less than the amount the permitholder paid.
- (e) If city property is damaged during the facilities work, the permitholder shall immediately notify the city. The city engineer may direct the permitholder to repair the damage, at its expense, or the city may repair the damage, and the permitholder shall reimburse the city for such costs.
 - (f) All facilities work must be conducted with suitable precautions to prevent damage to pipes, conduits, and other underground structures, and to protect from disturbance or damage all monuments and property marks until the city engineer has witnessed or otherwise referenced their location.
 - (g) All facilities work shall be made available for inspection by the city, upon request.
 - (h) Any contractor or subcontractor used for facilities work must be properly licensed under laws of the state of Kansas and all applicable local ordinances.
 - (i) All underground facilities shall be marked as appropriate flush-type markers or by the use of visible warning decals placed on above ground enclosures. The selection of the marker to be used shall take into account pedestrian and vehicle traffic in the vicinity of the facility.

Sec. 30-65. Appeals.

An occupant or applicant may appeal any decision of the city engineer made pursuant to this article, by filing a written appeal stating the basis of such appeal with the director of public works within ten (10) days of the city engineer's decision. Upon the occupant's or applicant's request, the director of public works will hold a hearing with the applicant on the written appeal. An occupant or applicant may appeal a decision of the director of public works, by filing a written appeal stating the basis of such appeal with the city manager within ten (10) days of the director's decision. Upon the occupant's or applicant's request, the city manager will hold a hearing with the applicant on the written appeal. The city manager's decision shall be final.

Sec. 30-66. Suspension of facilities work by the city engineer.

The city engineer may suspend any facilities work occurring the rights-of-way for any of the following reasons:

- (a) Failure to register as an occupant, or failure to obtain a facilities work permit, as required in this article;
- (b) Fraud, misrepresentation, or false statement in the occupant registration form or in the facilities work permit application; or,

- (c) Failure to comply with any condition or requirement of the article or the facilities work permit.

Sec. 30-67. Remedies.

The remedies provided in this article are not exclusive. In addition to any other penalty provided for in this article, the following remedies may apply:

- (a) If the permitholder fails to restore the public rights-of-way in the manner and to the condition required by this article, or any applicable code, rule or regulation, or fails to satisfactorily and timely complete all restoration required by the city, the city may issue a written notice of violation giving the permitholder ten (10) days to restore the rights-of-way in the manner and to the condition required by this article. If the permitholder fails to make the repairs required by the city, the city may affect those repairs and charge the permitholder the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against the facilities owner or contractor for violation of this subsection, and may recover its damages, including reasonable attorney fees, if the facilities owner or contractor is found liable by a court of competent jurisdiction.
- (b) If an occupant has not complied with the conditions of this article, the city engineer may place the occupant on probationary status. The city engineer shall send the person written notice of such status, and such notice shall describe the reasons for the probationary status. The probationary period shall be for one year from the date of notification. During the probationary period, the city engineer may place additional requirements on any permits issued to the occupant to ensure compliance with this article.
- (c) The penalty for a violation of any provision of this chapter may include a fine not exceeding five hundred dollars (\$500) or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. Each day the violation exists or continues shall constitute a separate offense.

Sections 30.68 - 30.70. Reserved

Section 2. That Article VIII of Chapter 15 of the Code of Ordinances of the City of Manhattan, Kansas, shall be repealed and retitled as follows:

Article VIII. Reserved.

Section 3. That Sections 15-116 through 15-122 of the Code of Ordinances of the City of Manhattan, Kansas, shall be repealed and amended as follows:

Sec. 15-116 to 15-122. Reserved.

Section 4. This ordinance shall be published in the official city newspaper and shall become effective on October 1, 2020.

Section 5. Ordinance No. 4971 and all other Ordinances or portions thereof, in conflict herewith are here by repealed.

**PASSED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS,
THIS 19TH DAY OF NOVEMBER, 2019.**



Michael L. Dodson, Mayor



ATTEST:



Brenda K. Wolf, CMC, City Clerk