

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

ORDINANCE NO. 50-177

AN ORDINANCE ADMENDING SECTIONS 10.08.010, 10.08.020, 10.08.030, 10.08.040, 10.08.050, 10.08.060, 10.08.070, 10.08.080, 10.08.090, 10.08.100, 10.08.110, 10.08.120, 10.08.130, 10.08.140, 10.08.150, 10.08.160, 10.08.170, 10.08.180, 10.08.190, 10.08.200, 10.08.210, 10.08.220, 10.08.230, AND 10.08.240 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO RIGHT-OF-WAY AND EASEMENT USE PERMITS, IN GENERAL, AND REPEALING THE ORIGINALS THEREOF.

AN ORDINANCE CREATING SECTIONS 10.08.081, 10.08.135, 10.08.175, 10.08.176, 10.08.177, 10.08.235, 10.08.250 AND 10.08.300 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO RIGHT-OF-WAY AND EASEMENT USE PERMITS, IN GENERAL.

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

SECTION 1. Section 10.08.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Definition.” For the purposes of this chapter, the following words and phrases shall have the following meanings:

- (a) “Easement Use Permit” means a permit to use the area on, under, or over dedications, or easements acquired by the City, separate and distinct from the general public use of such easements or dedications.
- (b) “Point-to-Point Agreement” means a license to use the area on, under, or over public sidewalks, streets, alleys, public rights of way, or other municipally owned property where the applicant is not the owner or lessee of the adjacent private property and the applicant does not qualify as a utility operating under a franchise granted by the City.
- (c) "Right-of-Way Use Permit" means a license to use the Right of Way. As used in this chapter, the term shall not apply to the short-time use of public space in connection with building construction that is regulated by the building code as set out by Article 2 of the Wichita-Sedgwick County Unified Building and Trade Code, nor shall it apply to a public utility operating under a franchise granted by the City, nor shall it apply when the City Engineer determines a permit is not necessary.

(d) “Use Permit” is a Right-of-Way or Easement Use, not including a temporary Use of Street Permit.

SECTION 2. Section 10.08.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Subject to regulations and permits as contained in this Chapter.” Use Permits and Point-to-Point Agreements shall be subject to regulations and permits as set forth in this Chapter.

SECTION 3. Section 10.08.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“List of existing permits and Permittees to be kept—Information to be shown.” The City Engineer shall make a list of all existing Use Permits and Point-to-Point Agreements and the Permittees in possession thereof, arranged according to the street locations, together with all necessary data applicable to each Right-of-Way Use and Easement Use Permits, and Point-to-Point Agreements. The City Engineer shall have authority to call upon other City departments for assistance, at that other department’s expense, in compiling such lists and carrying into effect the provisions of this Chapter.

SECTION 4. Section 10.08.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Permits for new privileges—Application.” Application for Use Permits shall be submitted to the City Engineer with appropriate drawings, plans or photographs attached. The application shall be made only by the owner of land that holds an easement; or owner or the owner’s agent of a property adjacent to a City owned easement, or the public Right of Way requested for use. The application shall contain a notarized certification that the owner or agent has the authority to bind the property.

SECTION 5. Section 10.08.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Approval of application—Issuance.” Upon approval of an application by the City Engineer, the applicant shall record the permit with the Office of the Register of Deeds of Sedgwick County in a form provided by the City. Upon payment of the requisite charges and copy of the permit as recorded, the permit shall be perfected. Such recording may be released by the City upon the satisfaction of the permit holder’s obligations under the permit. Permit and

application charges are non-refundable and shall not be pro-rated. The recording of the Use Permit may be waived in writing by the City Engineer.

SECTION 6. Section 10.08.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Authority of City Engineer to renew permits.” The City Engineer may renew permits on an annual basis upon payment of applicable fees and continuation in force of liability insurance for such permit.

SECTION 7. Section 10.08.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Liability of Permittee—To save and hold City harmless.” It shall be a condition of any Use Permit that the Permittee shall save, defend, and hold the City harmless of any and all liability, claims or expenses of any kind caused by, or growing out of, the construction, maintenance, operation, relocation, discontinuance or abatement of such use of the Right of Way or easement.

In the event that any public utility within the easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the Encroachment, the owner or Permittee shall be obligated to (a) allow the City to remove or damage any structure on the easement at the owner’s or Permittee’s sole expense; (b) remove the Encroachment; or (c) pay all additional costs required to accommodate the Encroachment. If the owner or Permittee wishes to remove the Encroachment, the owner or Permittee must do so within thirty (30) days of notification of the planned activities.

SECTION 8. Section 10.08.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Requirements as to liability insurance.” Whenever the construction, maintenance or abandonment of a Use Permit is attended with the possibility of damage or loss to the City, to other property owners, or to members of the public, the applicant for such permit shall furnish and file with the City Engineer’s Office proof of liability insurance in a minimum coverage amount of three hundred thousand (300,000) dollars per occurrence. Such insurance policy shall name the City as an additional insured and provide that the City will be given ten (10) days prior notice of cancellation.

SECTION 9. Section 10.08.081 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Same—Exceptions to liability insurance requirements.” Liability insurance will not be required for underground irrigations systems, plants, monitoring wells, easement encroachment, or as determined by the City Engineer. Notwithstanding this provision, no object of any type shall be allowed in the Right of Way if determined to be a sight hazard by the City Traffic Engineer.

SECTION 10. Section 10.08.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Emergency repair or restoration of Easement or Right of Way.” If the condition of any easement or Right of Way is deemed by the City Engineer to require immediate repair or restoration, the cost of all work, including but not limited to the cost of construction, maintenance, repair, operation, relocation, discontinuance, or abandonment, utility work, or any other effort or cost, regardless of nature, required to restore the easement or Right of Way shall be paid by the owner, adjacent property owner, and/or Permittee.

SECTION 11. Section 10.08.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Termination by the City for failure to pay permit fee—Notice to Permittee.” If any Permittee fails to pay the annual fee, with accrued penalties, for any Use Permit within thirty (30) days after the same is due, the City Engineer shall terminate the Use Permit and cause a notice of termination to be mailed to the owner of record.

SECTION 12. Section 10.08.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Permittee to arrange for restoration of property.” Upon termination of a permit, the Permittee shall make all necessary arrangements for the discontinuance and abandonment of the Encroachment and make or cause restoration of the property, as approved by the City Engineer. All costs associated with removal of the Encroachment and restoration of the property will be paid by the owner or Permittee.

SECTION 13. Section 10.08.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Failure of Permittee to make restoration—Work to be done by City—Cost.” If the Permittee fails to make arrangements as required by the preceding section, the City Engineer is authorized to perform the necessary work and charge that expense to the Permittee. In addition

to the above cost, the Permittee shall be charged with proportionate permit fees for the period up to the date on which the work or restoration is completed.

SECTION 14. Section 10.08.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unauthorized Use of Permit in the Easement or Right of Way, penalties.” The use of easement or Right of Way beyond that specified in the Use Permit is a misdemeanor.

Notwithstanding any other provision or ordinance, any Person making use of the easement or Right of Way without a Use Permit when required under this Chapter waives any and all claims for damages or loss, whether civil or criminal in nature, to the unpermitted object.

SECTION 15. Section 10.08.135 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Notice of Abandonment; consequences.” Any object placed or remaining in the easement or Right of Way without a required Use Permit shall be deemed abandoned and subject to removal after thirty (30) days’ notice by certified mail to the owner of record. Notwithstanding any other provision or ordinance, no criminal or civil action may be maintained for the taking of or damage to such abandoned property.

SECTION 16. Section 10.08.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Control and supervision by City Engineer—Generally.” When the public safety or welfare shall require the temporary or permanent discontinuance or modification of a permit, the City Engineer shall take all actions necessary for the public interest.

SECTION 17. Section 10.08.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Rules and regulations.” The City Engineer is authorized to prepare and enforce reasonable rules and regulations to govern the carrying out of the provisions of this Chapter.

SECTION 18. Section 10.08.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Revocation of permit; fees non-refundable.” All Use Permits provided for in this Chapter are revocable without refund or compensation to the Permittee.

SECTION 19. Section 10.08.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Annual permit fees for non-residential properties—Established.” Any applicant desiring a Use Permit, shall, upon approval of application, pay a fee as required in Section 10.34.030.

SECTION 20. Section 10.08.175 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Same—Annual permit fees for residential properties—Established.” Any Permittee desiring a Use Permit for use by a single-family residence shall, upon approval of application, pay a fee as required by Section 10.34.030.

SECTION 21. Section 10.08.176 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Water vaults in public Rights of way and easements prohibited.” Notwithstanding any other ordinance, provision, or directive, new vaults shall not be installed in the public Right of Way unless technically infeasible to be placed on private property. Any new vault installed in the Right of Way due to technical infeasibility shall have, in every circumstance, a Use Permit issued.

SECTION 22. Section 10.08.177 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Water vaults and lines in public Rights of way and easements.”

The Permittee shall be responsible for any maintenance or repairs on water vaults or domestic or fire lines on public property from the property line to, but not including, the first valve located on public Right of Way. In no case, however, shall the City be responsible for repairs or maintenance closer than six (6) feet from the supply-side exterior of the vault wall. The City may maintain, at its discretion, the water meter, pipe, and fittings between and including the inlet and outlet valves. The City Engineer will determine the location of the water valve(s) during the plan review process.

SECTION 23. Section 10.08.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Processing charge—Designated—Required when.” Any Use Permit authorized under this Chapter shall require payment of a processing charge as listed in Section 10.34.010.

SECTION 24. Section 10.08.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—In addition to inspection, construction and other permit fees.” All processing charges and annual fees established for Use Permits shall be separate from and in addition to inspection, construction or other fees or charges.

SECTION 25. Section 10.08.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Fees—Payment and disposition.” Permit fees and processing charges, except for existing uses, shall be payable in advance prior to the issuance of the annual permit and shall be for a term of one (1) year. The renewed permit shall be evidenced by the receipt of the annual permit.

SECTION 26. Section 10.08.210 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Exception.”

- (a) With the exception of the processing charge as set forth in Section 10.08.180, no annual permit fee shall be paid for a Use Permit when the granting of such permit is coupled with and is a part of the public requirement or consideration for the taking of land by the City in connection with the City's approval of a plat or lot split.
- (b) The processing charge shall accompany the application when a waiver of annual permit fee is requested. The application for a Use Permit shall state the reasons for the waiver and shall be accompanied by drawings, plans, or photographs showing all Encroachments and describing their nature and specifications. Upon the approval of the Use Permit by the City Engineer, the appropriate drawings, plans or photographs shall be made a part of the permit, and the recipient of the Use Permit, by acceptance of the Use Permit, shall be obligated to indemnify the City for any and all costs of removal of any unauthorized improvements not constructed according to the documents submitted and approved or not included in the Use Permit.
- (c) With the exception of the processing charge as set forth in Section 10.08.180, no annual permit fee shall be charged when the City Engineer determines the project to be one involving public safety, public beautification or improvement of public property for public purposes.
- (d) With the exception of the processing charge as set forth in Section 10.08.180, no annual permit fee shall be charged for underground sprinkler systems or surface treatment on standard drive approaches.

- (e) With the exception of the processing charge as set forth in Section 10.08.180, no annual permit fee shall be charged for test/monitoring/recovery wells for a governmental agency.
- (f) With the exception of the processing charge as set forth in Section 10.08.180, the annual fee for an easement encroachment may be waived by the City Engineer.
- (g) Any Person aggrieved by the action of the City Engineer may appeal this ruling on the waiver to the City Council by requesting a hearing before the Council within thirty (30) days of notification of the decision of the City Engineer.

SECTION 27. Section 10.08.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Penalty for failure to pay when due.” All Use Permits not paid within thirty (30) days after the due date shall be subject to a penalty of ten (10) percent of the amount of the permit fee, and ten (10) percent of the amount of the permit fee shall be added for each additional thirty (30) days from the due date.

SECTION 28. Section 10.08.230 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Limitations on new Encroachments.”

Nothing in this Chapter shall require the issuance of a Use Permit for an Encroachment not otherwise authorized under this Code.

SECTION 29. Section 10.08.235 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Mailboxes.” For the purposes of this Chapter, mailboxes complying with the United States Postal Service (USPS) requirements and the American Association of State Highway and Transportation Officials’ (AASHTO’s) “A Guide for Erecting Mailboxes on Highways,” 1994, et. sec, do not require a Right-of-Way Use Permit. Any mailbox not complying with the applicable USPS regulations or the AASHTO Guide, including but not limited to, masonry structures, railroad ties, or similar hazards, shall be unlawful; and the City or any City agent shall not be subject to liability for any claims arising from any non-compliant mailbox installation. The City retains its authority to remove or raze a non-compliant mailbox installation without compensation to the owner. The costs of removal shall be billed to the property owner. If such costs are not paid within ninety (90) days, such costs shall be assessed against the property.

SECTION 30. Section 10.08.240 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Right of City to criminal action; restoration.” It shall be unlawful for any Permittee to fail to restore the easement or the Right of Way within thirty (30) days of notice. Any Permittee failing to restore after thirty (30) days shall be issued a criminal complaint under the authority of the City Engineer or designee, or any City police officer.

SECTION 31. Section 10.08.250 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Failure to obtain, maintain, or renew permit.” If any Permittee fails to obtain, maintain, or renew a Use Permit, the City shall have the right to remove and dispose of any Encroachment on the easement or Right of Way. If the Encroachment is not an immediate hazard or nuisance, the Permittee may be given thirty (30) days written notice prior to the Encroachment’s removal. No compensation for the value of any Encroachment removed by the City shall be given under any circumstances. No civil or criminal action may be maintained against any party for the removal of an Encroachment that does not have a valid Use Permit. Any Encroachment existing on the easement or Right of Way without a valid Use Permit, for which the City Engineer has issued a notice to remove by certified mail, after thirty (30) days is deemed abandoned property, which may be disposed of by any party without recourse by any claimant.

SECTION 32. Section 10.08.300 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Use of Street Permit.” Any Person desiring to temporarily use a street, sidewalk, or alley shall obtain a Use of Street Permit, subject to the approval of the City Traffic Engineer, for which a fee shall be charged as listed in Section 10.34.010, and, in addition, shall pay for the use of such space, a fee per square foot per day as listed in Section 10.34.010.

SECTION 33. The original of Sections 10.08.010, 10.08.020, 10.08.030, 10.08.040, 10.08.050, 10.08.060, 10.08.070, 10.08.080, 10.08.090, 10.08.100, 10.08.110, 10.08.120, 10.08.130, 10.08.140, 10.08.150, 10.08.160, 10.08.170, 10.08.180, 10.08.190, 10.08.200, 10.08.210, 10.08.220, 10.08.230, AND 10.08.240 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 34. 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