

## CHAPTER XII. PUBLIC PROPERTY

Article 1. City Parks

Article 2. Management of Public Rights-Of-Way

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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 1987)
- 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 1987)
- 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. (Ord. 291; Code 1987)
- 12-104. 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.  
(Ord. 291; Code 1987)
- 12-105. 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. (Ord. 442; Code 1999)
- 12-106. 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. (Ord. 291; Code 1987)
- 12-107. CAMPING PROHIBITED. Overnight camping is hereby prohibited in city parks except where posted. (Code 1987)

- 12-108. 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. Upon direction by the mayor, the city is authorized to remove any vehicle, carriage, trailer, or any other item of personal property left or placed upon any park or city property. Such removal shall be made at the property owner's expense and any professional wrecker or removal service shall have a possessory lien against such property until the owner satisfies the cost of removal and any and all related costs and expenses. (Ord. 438; Code 1999)
- 12-109. 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, except by consent of the council. A waiver of the prohibition against cereal malt beverages on public property may be obtained with the consent of the city council. (Code 2017)
- 12-110. 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.  
(Ord. 291; Code 1987)
- 12-111. PICNICS. Picnics may be held only in any park or portions thereof as are designated for that purpose by the city. All areas or portions of any park used by picnickers shall be left in a neat, clean condition by them. All bags, cans, cartons, melon rinds and all leftovers must be taken away or placed in the garbage barrels. Salt water from ice cream containers shall not be poured on the grass in any park. No person shall disturb any picnic or intrude himself or herself upon it without the consent of those composing it. (Ord. 291; Code 1987)
- 12-112. SALE OF MERCHANDISE; PERMIT REQUIRED. It shall be unlawful for any person to locate, set up or operate any stand for the sale of food, drink or merchandise or to sell any food, drink or merchandise in any public park of the city without being issued a permit therefor from the city clerk. (Ord. 291; Code 1987)
- 12-113. CLOSING HOUR. It shall be unlawful for any person, except a public officer in the discharge of official duty, to visit, loiter about or be found in any public park of the city between the hours of 11:00 p.m. and 7:00 a.m., except as authorized by the governing body. (Ord. 291; Code 1987)
- 12-114. 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 1987)

## ARTICLE 2. MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

- 12-201. DEFINITIONS. Unless the context clearly indicates otherwise, the meanings of words and terms used in this article shall be as follows:
- (a) Public right-of way means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquire as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (b) Occupant means any person, firm, corporation, association, utility, or entity, which enters upon the right-of-way of the city, or in any manner establishes a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto.
- (c) Facility and facilities mean lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related items or appurtenances.  
(Code 2017)
- 12-202. AUTHORIZATION FROM CITY REQUIRED. (a) No person, firm, corporation, association, utility, or entity, shall enter upon the right-of-way of the city, or in any manner establish a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto, without the express written permission of the City. The permission of the City may be granted by a franchise agreement pursuant to the provisions of K.S.A. 12-2001 et seq. or by such other agreement as the governing body determines best protects the public interest in the right-of-way.
- (b) Nothing in this article shall be interpreted as granting any occupant the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.
- (c) The city shall process each valid and administratively complete application for use of the right-of-way within 30 days.  
(Code 2017)
- 12-203. HEALTH, SAFETY, AND WELFARE REGULATIONS. The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city.  
(Code 2017)
- 12-204. SPECIFIC PORTIONS OF RIGHT-OF-WAY RESTRICTED. (a) The city hereby prohibits the use or occupation of the following specific portions of public right-of-way:

[Insert and specifically describe those portions of right-of-way where prohibitions exist. See K.S.A. 17-1902(e) for the standards which must be followed when prohibiting use of a specific portion of the right-of-way.]

(b) If the city denies a request to use or occupy a specific portion of the public right-of-way, the requester shall be served a notice of such denial by first class mail. The notice shall indicate that the requester shall have 10 days from the date of receipt of the notice to request a public hearing by the city governing body concerning the denial. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the denial before the governing body. The hearing shall be held by the governing body within 30 days after the filing of the request therefore, and the potential occupant shall be advised by the city of the time and place of the hearing. Following the public hearing, if the city governing body denies a potential occupant's request to use or occupy a specific portion of the public right-of-way, such determination may be appealed to district court.  
(Code 2017)

12-205. COMPLIANCE WITH MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES. Any occupant of the public right-of-way shall comply with the provisions of Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), PUBLISHED BY THE U.S. Department of Transportation, Federal Highway Administration, 1988 Edition, Revision 3, dated September 3, 1993, which is incorporated herein by reference as if fully set forth herein.  
(Code 2017)

12-206. ADDITIONAL REQUIREMENTS.  
(Code 2017)  
**[Cities may impose additional requirements on right-of-way occupants, provided that such requirements do not include those identified in K.S.A. 17-1902(h).]**

12-207. EMERGENCIES. If there is an emergency necessitating response work or repair, any person, firm, corporation, association, utility, or entity which has been granted permission to occupy the public right-of-way may begin that repair or emergency response work or take any action required under the circumstances, provided that the person, firm, corporation, association, utility, or entity notifies the city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.  
(Code 2017)

12-208. REPAIR. Any occupant of the public right-of-way is hereby required to repair all damage to a public right-of-way caused by the activities of that occupant, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its function equivalence before the damage pursuant to the reasonable requirements and specification of the city. If the occupant fails to make the repairs required by the city, the city may effect those repairs and charge the occupant the cost of those repairs.  
(Code 2017)

12-209. RELOCATION. Whenever requested by the city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, an occupant promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such occupant's failure to timely relocate or adjust its facilities shall be borne by such occupant.  
(Code 2017)

12-210. FEES. The following fees shall be assessed against occupants of the public right-of-way:

- (a) A permit fee of \_\_\_\_\_;
- (b) An excavation fee of \_\_\_\_\_ for each street or pavement cut;
- (c) An inspection fee of \_\_\_\_\_;
- (d) Repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, and/or subcontractors in the right-of-way; and
- (e) A performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(Code 2017)

**[See KSA 17-1902(n) for a full description of the type of fees permitted and restrictions or qualifications on such fees.]**

12-211. INDEMNITY. (a) Occupants shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the occupant, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

(b) The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If an occupant and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law.

(c) This section is solely for the benefit of the city and occupant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(Code 2017)

- 12-212. CLAIM NOTIFICATION. An occupant shall promptly advise the city in writing of any known claim or demand against the occupant or the city related to or arising out of the occupant's activities in a public right-of-way.  
(Code 2017)
- 12-213. PENALTY PROVISION. Any person, firm, corporation, association, utility, or entity, or agent, contractor or subcontractor thereof, violating any provision of this article, shall be guilty of a municipal offense, and shall upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense.  
(Code 2017)