

CHAPTER XIII. STREETS AND SIDEWALKS

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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 city administrator, or his or her designee 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 constructed 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 2007)
- 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 2007)
- 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 2007)
- 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 2007)
- 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 2007)

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 2007)

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 2007)

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 2007)

13-110. **INANIMATE OBJECTS; UNLAWFUL WITHOUT PERMISSION; CROWDS; UNLAWFUL WHEN.** (a) It is unlawful for any person, firm or corporation or other entities, to leave or allow to be left any implements, tools, boxes, merchandise, goods, trash, cans, crates, hamburger and lunch stands, advertising showcases, chairs, tables or other articles on any of the sidewalks, parking ways, any other public ways or streets of this city longer than is necessary for loading or unloading the same; provided that the provisions of this section shall not apply if special permission for any of the above stated activities has been granted by the Board of Commissioners.

(b) Any business owner or business operator located within the downtown area of Hiawatha wishing to place objects as enumerated in Section A above on the sidewalks of the City of Hiawatha, Kansas, shall obtain a permit for one year from the City of Hiawatha, Kansas, by making application at City Hall and by signing a release of liability form releasing the City of Hiawatha, Kansas, from all liability for

placing said objects upon the sidewalk. Application forms and liability releases will be available at City Hall. Businesses, after receiving said permit from the city to place objects upon said sidewalks shall conform to the guidelines set forth below:

Guidelines for placing structures or displays on sidewalks in the downtown area of Hiawatha, Kansas:

- (1) A clear walking path of 72 inches in width must be maintained at all times.
- (2) Merchandise and/or fixtures located adjacent to the building must not protrude more than five feet beyond the structure and shall not, in any way, restrict the entrance to, or egress from said building.
- (3) Store front owners, tenants or agents shall not in any way rent, lease, divide or subdivide space in front of any store front building.
- (4) All items placed at the curb must allow for vehicle parking.
- (5) All items in these allowed areas are the total responsibility and liability of the business owners or business operators.
- (6) ADA requirements must be followed.
- (7) Items must sit flush, level and stable on the sidewalk.
- (8) Items shall not have protruding attachments that could cause a trip hazard.
- (9) When the store is not open for business or at night the items placed on the sidewalk will be removed. This requirement shall not be applied to vending machines, heavy benches, refuse collection containers, or flower boxes intended for permanent outside use.

Any business which does not follow these guidelines after the permit has been granted shall be in violation of this ordinance and it shall be required to conform with said guidelines upon notification of violation or be subject to the general penalties of the city ordinances of the City of Hiawatha, Kansas, or subject to having their permit revoked or both such actions.

(c) It is unlawful for any person to be a member of a crowd or collection of persons who stand upon any sidewalk or street crossing in the City so as to prevent, interrupt or obstruct the travel and free passage over the same by the public. Exceptions to this statement shall be granted for person attending special events or sales or parades within the downtown area which have been approved and authorized by the Board of Commissioners.

(Ord. 917; Sec. 1; Code 2007)

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 2007)
- 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 2007)
- 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 \$5.00. Each permit issued under the provisions of this section shall cover only one specified excavation. (Code 2007)
- 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 2007)
- 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 warn the traveling public of any construction work thereon or adjacent thereto. (Code 2007)
- 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 person / contractor shall restore the pavement, blacktop, sidewalk or other surfacing at the expense of the person from whom the excavation was made, to the

city's specifications. Alternatively, should proper arrangements be made ahead of time, the city can do the work and charge the individual.
(Code 2007)

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 governing body. (Code 2007)

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 2007)

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 governing body.

(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 2007)

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 2007)

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 2007)

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 2007)

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 2007)

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 2007)

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 2007)

ARTICLE 3. TREES AND SHRUBS

13-301. **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 safety when servicing city utilities or to preserve the symmetry and beauty of public grounds. The city 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, or is affected with any injurious fungus, insect or other pest. (Code 2007)

13-302. **DISEASED TREES; DETERMINATION.** Whenever any competent city authority or competent state or federal authority shall file with the governing body a statement in writing based upon a laboratory test or other supporting evidence that trees or tree materials or shrubs located upon private property within the city are infected or infested with or harbor any tree or plant disease or insect or larvae, the uncontrolled presence of which may constitute a hazard to or result in the damage or extinction of other trees or shrubs in the community, describing the same and where located, the governing body shall direct the city clerk to forthwith issue notice requiring the owner or agent of the owner of the premises to treat or to remove any such designated tree, tree material or shrub within a time specified in the notice. (Code 2007)

13-303. **SAME; NOTICE SERVED.** Notice shall be served by a police officer by delivering a copy thereof to the owner, and the person in possession of such property, or if the same be unoccupied or the owner a nonresident of the city, then the city clerk shall notify the owner by mailing a notice by certified mail to his last known address. (Code 2007)

13-304. **SAME; FAILURE OF OWNER; DUTY OF CITY.** If the owner or agent shall fail to comply with the requirements of the notice within the time specified in the notice, then the chief of police shall proceed to have the designated tree, tree material or shrub treated or removed and report the cost thereof to the city clerk. In lieu of city employees performing any such work, the governing body may contract with any competent person, company or corporation for the performance of such work. (Code 2007)

13-305. **SAME; PREVENT SPREAD OF DISEASE.** No tree, tree materials or shrubs as mentioned herein which have been cut down, either by the property owner or by

the city, shall be permitted to remain on the premises, but shall be immediately treated, removed and burned or immediately burned upon the premises, if safe to do so, so as to prevent the spread of the tree disease. (Code 2007)

- 13-306. **DANGEROUS, DEAD OR DISEASED TREES ON PRIVATE PROPERTY.**
 (a) Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that such 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 14 feet above the surface of the street or right-of-way. 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 visibility of any traffic control device or sign.
 (b) The city shall have the right to cause the removal of any dangerous, dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property. The city will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. The owners, within 30 days of the notice, may request a hearing covering the ordered removal. In the event of failure of owners to comply with such provisions, the city shall have the authority to remove the trees and charge the cost of removal on the owner's property tax notice.
(Code 2007)
- 13-307. **TREES ON PUBLIC PROPERTY; COST BORNE BY CITY.** The city shall have the authority to treat or to remove any tree as defined in section 13-301 of this article, or to remove any dead tree as mentioned herein, which is located within the limits of any public right-of-way within the city. The adjacent property owners shall not be responsible for the cost of treatment or removal of any such trees within the public right-of-way and this expense shall be borne by the city at large. (Code 2007)
- 13-308. **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 treatment or removal performed under the authority of sections 13-304:306 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 2007)
- 13-309. **INJURING TREES AND SHRUBS.** No person shall willfully break, cut, take away, destroy, injure, mutilate, or attempt to willfully break, cut, take away, destroy, injure or mutilate any tree, shrub, vine, flower or landscaping standing, growing, or being upon the premises in the possession of another, or growing on any public ground, street, sidewalk, promenade or park in the city. (Code 2007)
- 13-310. **FIRE HYDRANTS, PLANTINGS ADJACENT TO.** No person shall plant or cause to be planted nor allow to grow upon property owned by him or her any shrubs, trees, or planting of any kind within 10 feet of any fire hydrant in the city, in

order that every fire hydrant shall be in full view day or night, to fire apparatus approaching from any direction. (Code 2007)

- 13-311. PLANTING REQUIREMENTS; PROHIBITIONS; CERTAIN LOCATIONS.
(a) Trees planted on any street or parking, except on Iowa and Miami Streets, shall be on a line 11 feet from the lot line; Miami and Iowa Streets, west of Sixth Street shall be on a line nine feet from the lot line.
(b) No new trees shall be planted or grown on any part of Iowa Street from First to Sixth Streets.
(Code 1977, 12.24.040)

- 13-312. DEFINITIONS. As used in sections 13-311:318, the following definitions shall apply:
(a) Park Trees - means 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.
(b) Street Trees - means trees, shrubs, bushes and all other woody vegetation on land lying between the property line and street line side of all streets, avenues, or ways within the city.
(Code 1977, 12.24.100)

- 13-313. PERMITTED SPECIES OF STREET TREES. The following list constitutes the official street tree species for the city. No species other than those included in this list may be planted as street trees without written permission of the city.

<u>Small Trees</u>	<u>Medium Trees</u>	<u>Large Trees</u>
Apricot	Ash, green	Coffeetree
Crabapple, flowering (sp.)	Hackberry	Kentucky
Golden Raintree	Honey Locust (thornless)	Maple, silver
Hawthorn (sp.)	Linden or Basswood (sp.)	Maple, sugar
Pear, Bradford	Pagodatree, Japanese	Oak, Bur
Redbud	Pecan	Sycamore
Soapberry	Birch, River	Sycamore, London
Peach, flowering	Osage Orange (male	Planetree
Plum, purpleleaf	thornless)	Oak, Red
Serviceberry	Persimmon	Oak, Pin
	Poplar, White	
	Sassafras	
	Tree of Heaven	

(Code 1977, 12.24.110)

- 13-314. SPACING. The spacing of street trees will be in accordance with the three species class size listed in section 13-313, and no trees may be planted closer together than the following: except in special planting designed or approved by a landscape architect:
(a) Small Trees, 30 feet;
(b) Medium Trees, 40 feet; and
(c) Large Trees, 50 feet.
(Code 1977, 12.24.120)

- 13-315. DISTANCE FROM CURB AND SIDEWALK. The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in section 13-313 and no trees may be planted closer to any curb or sidewalk than the following:
 (a) Small Trees, two feet;
 (b) Medium Trees, three feet; and
 (c) Large Trees, four feet.
(Code 1977, 12.24.130)
- 13-316. DISTANCE FROM STREET CORNERS AND FIRE PLUGS; EXEMPTION.
 (a) No street tree shall be planted closer than 25 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 10 feet of any fireplug.
 (b) City street planters are exempt from the requirements of this provision.
(Code 1977, 12.24.140; Code 2007)
- 13-317. UTILITIES. No street trees other than those species listed as small trees in 13-313 shall 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. (Code 1977, 12.24.150)
- 13-318. 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 the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so 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 when other pruning practices are impractical may be exempted from this section at the determination of the city. (Code 1977, 12.24.170)
- 13-319. ARBORISTS LICENSE AND BOND REQUIRED. It is unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring a license. The license shall be issued in accordance with Chapter 5. No license shall be required of any public service company or city employee doing such work in the pursuit of their public service endeavors. (Code 1977, 12.24.200)

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 2007)
- 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 2007)
- 13-403. SAME; PENALTY. That any person violating the provisions of section 13-401 shall, upon conviction, be fined \$25.00. (Code 2007)
- 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 2007)
- 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 2007)

ARTICLE 5. TREE BOARD

- 13-501. TREE BOARD; CREATED; COMPOSITION. There is created and established a city tree board for the city which shall consist of five members, citizens and residents of this city, who shall be appointed by the mayor with approval of the commission. (Code 1977, 2.92.010)
- 13-502. TERM OF OFFICE; COMPENSATION. (a) The term of the five persons to be appointed by the mayor 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 occurs during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.
(b) Members of the board shall serve without compensation.
(Code 1977, 2.92.020)
- 13-503. DUTIES. (a) It shall be the responsibility of the board to study, investigate, council and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the city commission and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the city.
(b) The board, when requested by the commission, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.
(Code 1977, 2.92.030)
- 13-504. OPERATIONS; QUORUM. The board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. (Code 1977, 2.92.040)
- 13-505. INTERFERENCE WITH BOARD PROHIBITED. It is 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 chapter and chapter 12. (Code 1977, 2.92.050)
- 13-506. REVIEWS AND APPEALS BY COMMISSION. The city commission 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 city commission who may hear the matter and make final decision.
(Code 1977, 2.92.060)