

ORDINANCE NO. 030838

Amending Chapter 64, Code of Ordinances, by repealing Section 64-161, Prohibited acts, exceptions, and fees, and enacting in lieu thereof a new section of like number and subject matter.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 64-161, Prohibited acts, exceptions, and fees, and enacting in lieu thereof a new section of like number and subject matter, to read as follows:

Sec. 64-161. Prohibited acts, exceptions, and fees.

(a) *Definitions.* For purposes of this section the following words shall be defined as follows:

Banner means a strip of cloth, vinyl, plastic or combination thereof upon which there appears a sign or message, but shall not mean Banners regulated under Chapter 18, code of ordinances unless specified in this section.

Banner permit means a document issued by the director of public works allowing a temporary encroachment for a banner in the public right of way for a prescribed period of time.

Central business district freeway loop means that part of the city bounded on the north, east, south and west by the loop of freeways I-35, I- 70 and I-670.

Collectors and local streets mean those roadways as defined in the Major Street Plan to collect traffic from an industrial area, a commercial area or a residential street and move it to an arterial street so traffic can then move to its destination. The shorter length of travel on the Collector distinguishes the Collector from an arterial.

Director means the director of public works unless otherwise described in this section.

Event Banner means a banner containing a sign or message regarding a public event or a celebration of a season.

Local streets means those roadways as defined in the Major Street Plan intended to provide access to abutting properties and to carry traffic to Collector streets. Local streets provide access to residential neighborhoods.

Major Street Plan means the contents of that certain plan for the streets in the city,

adopted by Second Committee Substitute for Ordinance No. 64073, and as amended from time to time.

Neighborhood Banner means a banner containing a sign or message identifying the neighborhood association or educational institution within a neighborhood where they are located.

Primary Arterial streets are those roadways as defined in the Major Street Plan to move through traffic, yet accommodate major access points from abutting properties and normally carry 10,000 or more vehicles per day.

Public right-of-way means a city street or state roadway located in the city as defined in the city's "Major Street Plan", and collectors, local streets and Parkways and Boulevards under the jurisdiction of the Board of Parks and Recreation Commissioners.

Secondary Arterial streets means those roadways as defined in the Major Street Plan as Secondary Arterials to provide access for one or more neighborhoods to various activity centers such as Downtown, community shopping centers, strip commercial areas, employment centers and community and regional recreation areas and normally do not cross through residential neighborhoods, but act as boundaries to them.

(b) No person shall deposit, place, erect or maintain any structure, material, article, substance, decoration or thing on, in or above any street, curb, gutter, park, parkway, sidewalk or public place of the city except as specifically otherwise provided for by ordinance. This prohibition expressly includes the use of public rights-of-way for building or maintaining dispersed uses such as banners or telecommunications, utility, cable television or other similar systems.

(c) Encroachment into the right-of-way, allowed by ordinance, may be subject to the imposition of a reasonable license fee established by the city. If found to be in the public interest, the council may modify or waive the imposition of a license fee, provided, the fees established for banners set forth in subsection (f) shall not be modified.

(d) Whenever any person or organization shall desire to temporarily use a portion of any street or sidewalk for one of the purposes mentioned in subsection (b) of this section, the director may issue to such person or organization a Temporary Permit to use a portion of such street to such extent and for such time as the director shall find to be reasonably necessary and in the public interest.

(e) The issuance of any permit issued pursuant to this section is conditioned on the permit holder procuring and maintaining in force during the term of the permit general liability insurance, issued by a company approved by the director of finance, meeting the following conditions:

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- (1) A certificate of insurance acknowledging a policy of General Liability Insurance shall be provided.
- (2) Such certificate shall list as the insured the name of the applicant/permittee, having the same address.
- (3) Such certificate shall name the city as an additional insured.
- (4) Such certificate shall indicate the city as the certificate holder.
- (5) Such certificate shall show the policy number, effective date of the insurance and the expiration date of the insurance.
- (6) The limits of liability of the policy, as shown on the certificate, shall not be less than the following:
 - a. Personal Injury, each person: \$100,000.00, and
 - b. Personal Injury, each occurrence: \$300,000.00, and
 - c. Property Damage, each occurrence: \$50,000.00, and
 - d. Property Damage, aggregate: \$100,000.00, or
 - e. Bodily Injury and Property Damage Combined: \$400,000.00.
- (7) Such certificate shall state that the insurance company shall furnish 10 days prior notice of cancellation of the policy to the City Engineer.

(f) *Banners.* The display of Banners is a specialized temporary use of the public right of way and may be allowed on city streetlight poles and other such facilities in the public right of way subject to compliance with the conditions and regulations imposed in this subsection, including but not limited to standards adopted by the director to ensure that the display of banners do not create an unsafe condition for public use of the public right-of-way and are authorized encroachment uses of the public right-of-way. The provisions of this Article shall not apply to Banners regulated under Chapter 18, code of ordinances unless specified therein.

- (1) *Banner permit.* No Banner shall be displayed in the public right-of-way without a Banner permit issued by the director. The director is authorized to issue Banner Permits for the display of Event Banners and Neighborhood Banners in city public right-of-way. A Banner permit will state the number, and

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location of the Banners and the duration of the permit.

- (2) *Banner permit fee.* In addition to the application fee provided in this subsection, the following fees shall be paid to the city treasurer before a Banner permit is issued:
- (3) *Application for Banner Permit.*
 - a. Application fee. A fee of \$50.00 to cover the various costs incurred by the city in investigating and processing the application shall be paid to the city at the time of application for a Banner permit issued under this section. The application fee is not refundable. The fee shall be deposited into an account established for the Department of Public Works, Engineering Division for right-of-way service charge-outs.
 - b. Contents. Any person desiring to obtain a Banner permit under the terms of this subsection shall make application therefor to the director, in writing, on a form provided by the director. The applicant shall furnish the following:
 - 1. Color picture of the banner, or banners to be displayed.
 - 2. Detail drawing of Banner brackets and other hardware used to suspend the Banner.
 - 3. Four copies of a scale map or plan locating the poles to be used for display, and depicting the street right-of-way lines.
 - 4. Permission in writing from the owner of a pole not owned by the city allowing the display of a Banner from such pole.
 - 5. A list of the pole locations and pole numbers.
 - 6. An insurance certificate that meets the requirements contained in subsection (e) of this section.
- (4) *Issuance.* No Banner permit provided for by this subsection shall be issued for the display of any Banner except in conformity with the following:
 - a. Approved Locations. Banners for display within the public right-of-way may be displayed only on primary arterials, secondary arterials and collector streets but shall not be displayed on local streets, freeways or

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expressways. The display of Banners on boulevards, parkways, streets or roads under the jurisdiction of the Board of Parks and Recreation Commissioners, in addition to compliance with all other regulations and conditions in this section, shall require approval from such Board. The display of Banners from a privately owned building shall require a permit issued by the Department of Codes Administration in accordance with Chapter 18, Code of Ordinances.

- b. Alignment and direction of display. Permitted banners may only be displayed vertically, perpendicular or parallel to the curb of a street along the sides of public right-of-way. No banner shall be suspended or extend across the public right-of-way from one side of a street to the other side of a street.
- c. Size, materials, placement.
 - 1. No Banner shall exceed 30 inches in width or 72 inches in length provided that a larger Banner may be permitted if an applicant for a Banner Permit furnishes to the director a wind load analysis, signed and sealed by a registered professional engineer of the State of Missouri, setting forth that the potential wind load on the pole for each proposed display for the total banners on each pole is within the design standards for the pole installation.
 - 2. The lowest edge of the Banner shall not extend less than 16 feet above the level of the street.
 - 3. Vinyl-coated nylon or a similar fabric Banners are permitted so long as they are constructed of weatherproof and flame-retardant material
 - 4. The number and placement of banners shall limited as follows:
 - i. One banner bracket set per pole.
 - ii. A maximum of 2 banners may be installed on a single bracket set.
 - iii. Banners shall not be placed closer than 200 feet from other banners except at intersections and those streets in the central business district freeway loop.

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5. If the process of installation or removal of the banners will result in a disruption of traffic, then the applicant shall comply with all of the applicable regulations, and obtain such traffic control permits and pay the applicable fees.
 - d. No Banner permit shall be issued if the applicant has failed to meet all requirements set forth in this subsection; if at the time of the proposed display there will be a conflict of time with city sponsored Banners at the proposed location; if at the time of the proposed display there will be a conflict with construction activities at the proposed location; if the proposed Banner contains a display of a religious message or symbol; or if the proposed Banner contains a commercial advertisement of any kind.
 - e. As a condition for the issuance of a Banner permit, the applicant shall furnish and maintain a restoration deposit in the amount of \$50.00 for each pole upon which a banner will be attached under the permit. Upon city approval of the satisfactory removal and restoration of the Banners and hanging brackets by the permittee, the restoration deposit, less any amount used for removal or repairs, will be refunded to the permittee.
 - f. As a condition for the issuance of a permit for an Event Banner, the applicant shall pay the city an inspection fee of \$50.00 for the first pole and \$2.00 for each additional pole under the permit.
 - g. There shall be no inspection fee for the issuance of a permit for a Neighborhood Banner.
- (5) *Duration for display.*
- a. The Banner permit for the display of an Event Banner shall not exceed 90 days.
 - b. The Banner permit for display of a Neighborhood Banner shall not exceed 365 days.
 - c. A Banner permit may be renewed, following approval of an application and payment of the permit fee and compliance with all other requirements set forth in this subsection.
 - d. Unless otherwise approved by the director, upon expiration of a Banner permit, banners and hanging brackets shall be removed by the permittee.

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During the permit period, damaged, deteriorated, or faded banners shall be removed by the permittee and may be replaced. If the permittee fails to remove the banner and hanging brackets within a reasonable time after expiration of the Banner permit or within a reasonable time after notification by the city that a banner is damaged, deteriorated, or faded, then the city may remove the banners and brackets without notice and charge the permittee a removal fee of \$50.00 per pole. Upon removal by the city, title to all materials, which have been removed, shall vest in city as partial compensation for the cost of removal.

- e. The issuance of a Banner permit is a license and not a grant and may be revoked by the director at his discretion; upon revocation the permittee shall cause the removal of the facilities and the restoration of the area without expense to the City.
- f. The insurance must remain in force during permitted duration. If at any time the insurance expires or is cancelled, the permit shall be deemed null and void and the banners are to be removed from public property. If a reasonable time lapses upon such expiration or cancellation, and the permittee has not removed the banners and brackets, the City may remove them without notice. Upon removal by the City, title to all materials, which have been removed, shall vest in City as partial compensation for the cost of removal.

(g) *Encroachment ordinance license fee and application fee.* The provisions in this subsection shall apply to encroachments to deposit, place, erect or maintain any structure, material, article, substance, decoration or thing on, in or above any street, curb, gutter, park, parkway, sidewalk or public place of the city but shall not apply to Banners.

- (1) Whenever any person or organization shall desire to use a portion of any street or sidewalk for one of the purposes mentioned in subsection (g) of this section, the director shall, upon review and approval, finding the encroachment to be reasonably necessary, in the public interest and not containing commercial advertising nor religious messages or symbols, prepare an ordinance to allow said encroachment and submit it to the City Council for review and consent. The director also may issue to such person or organization a temporary permit to use a portion of such street to such extent and for such time, as the director shall find to be reasonably necessary and in the public interest.
- (2) Encroachments. Encroaching uses of any street or sidewalk that require an ordinance include but are not limited to subdivision and community markers,

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private telecommunication lines, retaining walls, private sewer lines and private storm drain lines. Encroaching uses of any street or sidewalk for which the director may issue a temporary permit include but are not limited to monitoring wells and directional signage.

- (3) Application. An applicant for an encroachment under subsection (g) of this section shall:
- a. Submit a letter of request and eight (8) sets of plans depicting the encroachment to the City Engineer that contains the following information:
 - 1. Property owners name, address and telephone number.
 - 2. Name of project.
 - 3. Description of the project.
 - 4. Detailed reason and use for the encroachment.
 - 5. Applicants name, address and phone number.
 - b. Submit a letter from each public utility stating no interference with their facilities will be required.
 - c. Submit plans which shall contain the following information:
 - 1. Name and address of the owner of the installation.
 - 2. Signature and seal of a registered professional engineer of the State of Missouri (where applicable).
 - 3. Plan and elevation views of the installation along with details of appurtenances, cross-sections and construction notes as required and pictures, if available.
 - 4. Dimensions locating the encroachments in relation to street and/or easement right-of-way lines, lot lines and land lines to locate the facilities to be constructed.
 - d. Submit an insurance certificate that meets the requirements named in subsection (e) of this section. The insurance must remain in force

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during permitted duration. If at any time the insurance expires or is cancelled, the permit shall be deemed null and void and the encroachment shall be removed from the public property. If the permittee fails to remove the encroachment, then the city may remove it without notice and may charge the cost of removal to the permittee. Title to all materials removed by the city shall vest in city.

- e. Show proof of membership in a statewide one-call notification center for encroachments for a privately owned underground utility.
 - f. Obtain approval of the abutting property owners.
 - g. Obtain the approval of the Municipal Art Commission if required.
- (4) *Application fee.* Any person filing an application submitted for special ordinance approval of private use of public property shall pay a nonrefundable application fee of \$150.00 to the city to defray the expense of investigating the application, issuing the permit and drafting an ordinance if required. The application fee shall be deposited into an account established for the Engineering Division of the Department of Public Works for right-of-way service charge-outs.
- (5) *License fee.* The Encroachment into the right-of-way shall be subject to the imposition of a reasonable license fee in an amount established by the city based on the fair market value of the use of such space. The Council may modify or waive the imposition of a license fee if it determines that it is the best interests of the public. Unless waived, the fee shall be payable prior to issuance of any required permits to construct the encroachment or prior to the installation of the encroachment if no permits are required. The calculated license fee, if imposed, shall be reduced by the amount of the assessed application fee. The license fee, if imposed, shall be deposited into the general account of the city.
- (6) The permission granted under this subsection shall be construed as a permit and not a grant and may be revoked by the director at his discretion; upon revocation the permittee shall cause the removal of the facilities and the restoration of the area without expense to the city.
- (7) Any person or organization obtaining either an ordinance allowing an encroachment of any street or sidewalk or a temporary permit to use a portion of any street or sidewalk shall comply with Section 64- 116 of this code.

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Approved as to form and legality:

Assistant City Attorney