(Published in the Topeka Metro News February 15, 2004)

ORDINANCE NO. 18177

AN ORDINANCE introduced by Mayor James A. McClinton relating to the location of equipment, amending Topeka City Code § 130-693, and repealing said original section.

BE IT ORDEIGNED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. Topeka City Code § 130-693, Location of equipment, is hereby amended to read as follows:

Location of equipment.

(a) Undergrounding. Unless otherwise permitted by an existing franchise, new utility construction undertaken by a registrant shall be installed underground or contained within buildings or other structures in conformity with applicable codes. An exception may be granted if the cost of utility burial is considered to not be cost efficient. Installation of necessary control equipment and line marker signs as required by city, state, and federal codes may be installed above ground. The director may establish specific right-of-way location assignments for each respective utility registrant if the available right-of-way becomes overly crowded. Assignments may also be made in new developments to preclude future space conflicts. Notwithstanding the above, this provision shall not require in-fill housing to have undergrounding. Further, notwithstanding the foregoing, the requirement for underground utility location in the City shall be subject to the following exceptions:

(1) TEMPORARY EXCEPTIONS. The public works director, or his or
her designee, may grant a temporary exception to erect, construct, install or
maintain poles, wires and other overhead structures for electrical power or
communication service which is reasonably required for emergencies or for
building construction purposes. The temporary exception may be granted for a
period not to exceed one hundred twenty (120) days. However, in the event the
purpose for which the temporary exception referred to herein granted has not
been remedied or the construction cannot be completed within the period herein
provided, one (1) additional one hundred twenty (120) day temporary period may
be granted to avoid undue hardship.

(2) PERMANENT EXCEPTIONS. The requirement for underground
utility location shall not apply to any of the following:

(A) Three (3) phase primary electric distribution or transmission
lines with capacities of 12KV or greater that provides a primary electric
source between substations or service areas and/or are utilized to transfer
load to support the electric system which do not traverse a building site or
subdivision which is subject to the underground utility location requirement
except which are necessary to provide service thereto.

(B) Poles, overhead wires, and associated overhead structures,
for single phase electric distribution or transmission lines when part of an
existing line originates in an area outside a building site or subdivision
which is subject to the underground utility location requirement.
(C) The replacement of poles, overhead wires and associated overhead structures for single or three (3) phase electric distribution or transmission lines as permitted in the aforementioned exceptions when necessary for the purpose of maintaining, altering, or upgrading the lines or service.

(D) In-fill housing shall not be subject to the underground utility location requirement if the subdivision in which the infill housing is to be located is served by overhead utilities.

(E) Radio and television antennae.

(F) Poles used exclusively for street or area lighting or for traffic control facilities.

(G) Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service to those persons located within a building site or subdivision which is subject to the underground utility location requirement or in the surrounding area.

(H) The public works director and planning director or their designees may jointly grant an exception from the underground utility location requirement to allow for construction of a residential or commercial structure. In granting such an exception, the following factors shall be considered:

1. Whether a plat has been recorded.
2. Percentage of adjacent homes constructed with above ground utilities.

3. Location of existing above ground utilities.

4. Location of roads or streets.

5. Location of natural water courses.

6. Sub surface geological conditions.

7. Topographical conditions.

8. Excessive financial burden.

(b) Installation of necessary control equipment and line marker signs as required by city, state, and federal codes may be installed above ground.

(bc) Corridors, location of utilities. The public works director or his or her designee may assign specific corridors or locations within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment that is or, pursuant to current technology, the public works director or his or her designee expects will someday be located within the right-of-way. All excavation or other permits issued by the public works director or his or her designee involving the installation or replacement of equipment may designate the proper corridor for the equipment at issue. The public works director or his or her designee has final approval of all utility locations within the right-of-way.

(cd) Hindrance. One (1) year after the passage of this article, any equipment found in a right-of-way that has not been registered shall be deemed to be a hindrance.
to the orderly use of right-of-way. The city may exercise any remedies or rights it has at
law or in equity, including, but not limited to, abating the hindrance or taking possession
of the equipment and restoring the right-of-way to a useable condition. Utility registrants
may be liable for damages caused by abandoned utilities within the public right-of-way.
Utility registrants exercising diligence under these conditions would be exempt from
liability for damages.

(de) **Limitation of space.** To protect health and safety, the public works director
or his or her designee shall have the power to prohibit or limit placement of new or
additional equipment within the right-of-way if there is insufficient space to
accommodate all of the requests of registrants or persons to occupy and use the right-
of-way. In making such decisions, the public works director or his or her designee shall
strive to the extent possible to accommodate all existing and potential users of the right-
of-way, but shall be guided primarily by considerations of the public interest, the public's
needs for the particular utility service, the condition of the right-of-way, the time of year
with respect to essential utilities, the protection of existing equipment in the right-of-way,
and future city plans for public improvements and development projects which have
been determined to be in the public interest.

**Section 2.** That Topeka City Code § 130-693 is hereby specifically repealed.

**Section 3.** This Ordinance shall take effect and be in force from and after
passage, approval and publication in the official City newspaper.
Passed and approved by the City Council FEB 17 2004

ATTEST:

James A. McClinton, Mayor

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 2/18/04 BY
TO BE CODIFIED
NOT TO BE CODIFIED