AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. concerning streets, sidewalks, and other public places, repealing City of Topeka Code §§ 130-176, 130-177, 130-196 through 130-207, 130-231 through 130-238, 130-261 through 130-264, 130-281 through 130-284, 130-301 through 130-310, and 130-331 through 130-333, amending City of Topeka Code Chapter 130, Article IV and §§ 130-156 through 130-165, and repealing said original sections.

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

Section 1. City of Topeka Code Chapter 130, Article IV, Construction Work, Division 1, Generally, is hereby amended to read as follows:

Article IV

Construction Work in City Right-of-Way

Division 1.

Generally.

Section 2. City of Topeka Code § 130-156, Filing of maps and plats required, is hereby amended to read as follows:

Filing of maps and plats required.

Every person contemplating the laying of any underground pipe, main or conduit in any of the streets, avenues, alleys or other public grounds in the city for the purpose of distributing or furnishing water, gas, oil, hot air, steam, steam heat, electric light, electric power, telegraph or telephone service shall file in the office of the city engineer, at least ten days before the commencement of the excavation work for the laying of such pipe, main or conduit, a map, plat or chart showing the location, size and length of such pipe, main or conduit; all connections, branches, cutoffs, lamps, posts, poles, buildings and other
attachments; the depth of such pipe, main, conduit and connections underground; and the
size and dimensions of all buildings and appurtenances aboveground. The person making
such map, plat or chart shall attach thereto an oath stating that such map, plat or chart is
correct.

**Application and Permit Required.**

(a) **Application.**

(1) Any person desiring to obtain the City’s permission to access the City’s
right-of-way or easements for the following purposes, including but not limited to:
excavation; boring or tunneling; repair, construction or maintenance of a driveway, driveway
approach or sidewalk; connection or disconnection with a water line or sewer line; or
construction, repair or maintenance of an underground or overhead utility, shall first make
application to the Development Services Director or designee and secure a permit
therefore.

(2) The application shall be on a form supplied by the Development
Services Director and shall contain the following:

1. The specific location by each street address or place at which the work is to
be performed;

2. The purpose for which the work is intended;

3. The dimensions: Length, breadth and depth thereof;

4. The time when the work is to be commenced theron;

5. The time required to complete the work;

6. An agreement that the applicant shall hold the City harmless from any and all
claims for injury or damages whatsoever to persons or property that may
result from the contractor’s activities in the right-of-way or easement; and

7. An agreement that the applicant shall repair any defective work done by the applicant. Further the applicant shall agree to reimburse the City for any costs incurred by it to repair or replace the defective work should the applicant fail to do so.

8. That the applicant holds a current contractor’s license under Chapter 26 of this code to do the work for which the permit is sought. Provided however any permit required by this article for the construction, repair or replacement of sidewalk, driveway or driveway approach may be issued to an unlicensed individual provided the work to be done is for work at the applicant’s single-family dwelling, including accessory building, used exclusively for living purposes, the individual is the owner of the premises, and occupies such premises. The individual shall be responsible for all materials, labor and obtaining all necessary inspections and shall submit plans that have to be approved prior to the issuance of a permit.

(b) **Permit.**

(1) If the application is approved by the Development Services Director under this article, the Development Services Director shall issue the permit applied for upon the payment of a fee as established in a schedule maintained by the Public Works Director or his or her designee, therefore to cover in part the expense of regulating work in the right-of-way and issuing permits therefore, and such fee shall be paid to the Development Services Director.

(2) Where any work as set forth in this article, for which a permit is
required, is commenced or proceeded with prior to obtaining such permit, the fee specified
in this section shall be doubled, but the payment of such double fee shall not relieve any
person from fully complying with the requirements of this article in the execution of such
work, nor from any penalties prescribed in this article.

(3) Permit issued pursuant to this article shall be valid for a period of
seven calendar days. The seven-day period shall include an allowance of four days for
inclement weather conditions. If work delay due to inclement weather exceeds four days,
the Development Services Director may grant an extension of time. In emergency
situations where excavation work must be started prior to obtaining a permit, such as during
holidays or evenings, the contractor or utility company shall obtain the permit the next
working day. If the work is not completed within seven days of the issuance of the permit,
the permit may be extended by the Development Services Director for an additional fee
equal to the amount of the original permit fee. Where the work is estimated to exceed
seven days, not more than four days shall be granted for inclement weather delays.

(c) If any person shall persistently fail, refuse or neglect to comply with the
provisions of this division, or any reasonable orders and directions of the Development
Services Director in reference thereto, the Development Services Director may refuse to
issue any further permits to such party.

Section 3. City of Topeka Code § 130-157, Reserved, is hereby amended to read
as follows:

Insurance Required.

No permit shall be granted under this article unless the applicant shall present to the
Development Services Director evidence of a satisfactory, public liability insurance policy
covering all operations of three hundred thousand dollars ($300,000.00) combined single
limit for liability and property damage. Such policy may be written to allow no more than
one thousand dollars ($1,000.00) for a paid deductible. Should any policy be cancelled, the
City shall be notified of such cancellation at least ten (10) days prior to such cancellation
becoming effective, and provisions to that effect placing upon the company writing such
policy the duty to give such notice shall be incorporated in such policy. If any such
insurance policy at any time fails, in the opinion of the Public Works Director or his or her
designee, to comply with the provisions of this section or to afford reasonably satisfactory
protection to the persons intended to be protected thereby, he/she shall in writing so notify
the applicant and the City Clerk, and failure to maintain the insurance required by this
section shall be grounds for revocation of any such permit and refusal to grant any further
permit until such insurance requirement is met.

Section 4.  City of Topeka Code § 130-158, Reserved, is hereby amended to read as follows:

City Engineer, standard plans and specifications, supervision, records.

(a) The City Engineer is authorized to prepare standard plans and specifications
for the construction of all improvements as well as any other work within the City’s rights-of-
way which shall be furnished to any permittee upon application. It shall be the duty of the
City Engineer to superintend and inspect all work authorized by a permit. All completed
work shall be inspected by the City Engineer and must pass a final inspection.

(b) All work specifically including but not limited to excavation; boring or
tunneling; repair, construction or maintenance of a driveway, driveway approach or
sidewalk; connection or disconnection with a water line or sewer line; or construction, repair
or maintenance of an underground or overhead utility shall be done in accordance with the technical specifications. If any person fails to construct the improvement in the right-of-way in conformity with prescribed standards, the City reserves the right to remove and replace the nonconforming work. The cost of removal and replacement shall be levied as a special assessment on the piece of land abutting the improvement.

(c) The Development Services Director shall keep records pertaining to applications and permits issued and agreements entered into under the provisions of this article.

Section 5. City of Topeka Code § 130-159, Reserved, is hereby amended to read as follows:

**Barricades and warning devices.**

All persons performing work on a public street shall provide barricades, warning devices, and traffic control devices in accordance with the current City approved edition of the Manual for Uniform Traffic Control Devices, as well as such other rules, regulations, and restrictions promulgated by the City Engineer.

Section 6. City of Topeka Code § 130-160, Reserved, is hereby amended to read as follows:

**Interfering with movement of traffic.**

(a) When any cut or excavation is performed on any public street, it shall be properly backfilled to top of pavement or bridged or plated, as approved by the Department of Public Works, Engineering Division, to allow the operation of traffic thereon; except between the hours of 8:30 a.m. to 4:00 p.m., or as provided for under subsection (b).

(b) When any cut or excavation is performed on any street, it shall be unlawful
without a traffic disruption permit issued by the Development Services Director and approved by the Traffic Engineering Department, to do any of the following acts:

(1) Leave any pavement material, stone and earth or any other material removed from street cuts, openings or excavations on the street before 8:30 a.m. or after 4:00 p.m.

(2) Perform any work which will require the closing of any lane of moving traffic between the hours of 7:00 a.m. and 8:30 a.m. or from 4:00 p.m. to 6:00 p.m.

(3) Do or perform any work or operation or to place any material, equipment, barricades or other obstructions in such a manner as to require the closing at any time of more than one lane of moving traffic on any street.

Section 7. City of Topeka Code § 130-161, Reserved, is hereby amended to read as follows:

**Repair by City; costs.**

(a) If the construction of improvements or other work within the City’s rights of way is not in conformance with City’s technical specifications the provisions of this article, the Department of Public Works shall correct or perform the work.

(b) The Department of Public Works shall keep an accurate account of the cost of such operation required under subsection (a), and such cost, plus an administrative fee of seventy-five dollars ($75.00) to reimburse the City for the administrative costs incurred by the City to oversee the correction to the nonconforming work, shall be charged to the person to whom the permit for such work was issued or in the case when no permit was issued, the owner of the property adjacent to the improvement shall be charged the cost of
work and the administration fee. No further permits for work in the City’s right-of-way shall
be issued to such person until such charges have been paid in full.

Section 8. City of Topeka Code § 130-162, Reserved, is hereby amended to read as follows:

**Removal when obsolete.**

Any existing driveway approach built for a purpose other than its present intended use shall be closed and the parking, curb and gutter restored to its original conditions by the owner of the property for which the building permit is sought.

Section 9. City of Topeka Code § 130-163, Reserved, is hereby amended to read as follows:

**Prohibited acts.**

(a) In addition to the administrative action available to the City, under Topeka City Code § 130-165, Prohibited acts, it shall be unlawful for any person or contractor licensed by the City, its employee, agent or subcontractor to cause, permit or allow the following:

1. Fail to obtain the proper permit;
2. Fail to complete all work within the specified permit limits;
3. Fail to restore the right-of-way or easement to the same condition that existed prior to commencement of the work authorized by the permit;
4. Fail to establish traffic control in accordance with the Manual of Uniform Traffic Control, current City approved edition, or such other rules, regulations, or restrictions promulgated by the City Engineer;
5. Fail to notify the City of Topeka, Engineering Division Construction Management, of the commencement of work authorized by the permit; and
(6) Fail to execute work in accordance with City of Topeka Standard Technical Specifications and Detail Drawings, latest edition;

(7) To remove or interfere with any traffic control device in the right-of-way;

(8) To cut, damage or break any curb, gutter or sidewalk unless authorized under a permit issued by the City;

(9) To interfere with traffic in violation of City of Topeka Code § 130-160.

(10) To hinder or obstruct the repair or construction of any public improvement or other work in the City’s right-of-way pursuant to any permit issued under this article;

(11) Fail to remove an existing obsolete driveway approach.

(b) Any person violating this section may be punished by:

(1) A fine of not more than four hundred ninety-nine dollars ($499.00);

(2) Imprisonment in jail for not more than one hundred seventy-nine (179) days; or

(3) Both such fine and imprisonment not to exceed the limits set out in subsections (c)(1) and (c)(2).

(c) Provided however contractors holding a valid license with the City shall be given notice of a violation with opportunity to cure in accordance with the provisions of Section 10 prior to prosecution under this section.

(d) Provided however entities holding a valid franchise agreement with the City shall be given notice of a violation and an opportunity to cure in accordance with the franchise agreement prior to prosecution under this section.
Section 10. City of Topeka Code § 130-164, Reserved, is hereby amended to read as follows:

Suspension or revocation of license.

(a) No contractor licensed by the City, its employee, agent or subcontractor shall cause, permit or allow any of the following:

(1) Fail to obtain the proper permit;

(2) Fail to complete all work within the specified permit limits;

(3) Fail to restore the right-of-way or easement to the same condition that existed prior to commencement of the work authorized by the permit;

(4) Fail to establish traffic control in accordance with the Manual of Uniform Traffic Control, current City approved edition, or such other rule, regulation, or restriction promulgated by the City Engineer;

(5) Fail to notify the City of Topeka, Engineering Division Construction Management, of the commencement of work authorized by the permit;

(6) Fail to execute work in accordance with City of Topeka Standard Technical Specifications and Detail Drawings, latest edition;

(7) To remove or interfere with any traffic control device in the right-of-way;

(8) To cut, damage or break any curb, gutter or sidewalk unless authorized under a permit issued by the City;

(9) To interfere with traffic in violation of City of Topeka Code Section 130-160;

(10) To hinder or obstruct the repair or construction of any public
improvement or other work in the City’s right-of-way pursuant to any permit issued under this article; or

(11) Fail to remove an existing obsolete driveway approach.

(b)(1)(a) In the event that a contractor, its employee, agent or subcontractor, shall cause, permit or allow any acts prohibited in subsection (a), contractor shall be served with a notice of the violation and given a thirty (30) day period in which to remedy the violation or reimburse the City for the cost of repairing the defective condition.

(b)(1)(b) Upon receipt of a notice of violation issued by the Public Works Director, the contractor shall have ten (10) days to file a written notice of appeal of the notice of violation with the Public Works Director. An administrative hearing shall be set within ten (10) days of the receipt of the appeal. Any enforcement of the notice shall be stayed until the hearing before the City’s administrative hearing officer.

(b)(2)(a) In the event that a contractor, its employee, agent or subcontractor, shall cause, permit or allow any acts prohibited in subsection (a) and fail to remedy the violation, contractor’s license shall be suspended as follows:

(A) Upon the first (1st) violation of subsection (a), the contractor’s license will be suspended by the Public Works Director for one (1) week.

(B) Upon the second (2nd) violation of subsection (a), the contractor’s license shall be suspended for a period of one (1) month.

(C) Upon the third (3rd) violation of subsection (a), the contractor’s license shall be suspended for a period of one (1) year.
(D) Upon a fourth (4th) or subsequent violation of subsection (a), the contractor’s license shall be suspended for a period of five (5) years.

(b)(2)(b) Upon receipt of a notice of suspension issued by the Public Works Director, the contractor shall have ten (10) days to file a written notice of appeal of the license suspension with the Public Works Director. An administrative hearing shall be set within ten (10) days of the receipt of the appeal. The suspension of the license shall be stayed until the hearing before the City’s administrative hearing officer.

(b)(2)(c) During the period of any license suspension, a contractor may not apply for or obtain any building or right-of-way access permit.

(b)(2)(d) The contractor whose license is suspended shall only be eligible to apply for or obtain a building or right-of-way access after completion of the term of suspension and correcting the defective condition or reimbursing the City for the cost of repairing the defective condition.

(c) Provided however, a contractor performing work for the City under contract shall be given notice of a breach of performance and an opportunity to cure as set forth in the contract documents prior to issuance of a notice of violation and/or suspension of the contractor’s license under this subsection.

(d) Provided however, entities holding a valid franchise agreement with the City shall be given notice of violation and an opportunity to cure in accordance with franchise agreement prior to enforcement under this section.

Section 11. City of Topeka Code § 130-165, Reserved, is hereby amended to read as follows:
Variances.

It is hereby recognized that variance from strict application of this article may be necessary or desirable to better fit existing physical conditions, traffic conditions or land uses. The City Engineer with the concurrence of other applicable agencies is hereby authorized to grant, in writing, as a part of any permit issued by the Development Services Director, variances from the strict application of the provisions of this division, upon determining that any or all of the following conditions are present:

1. The exception or variance desired arises from peculiar physical conditions not ordinarily existing in similar districts in the City or is due to the nature of business and operations on the abutting property.

2. The exception or variance desired is not against the public interest, safety, convenience and general welfare.

3. The granting of the permit for the exception or variance will not adversely affect the right of adjacent property owners or tenants.

4. The strict application of the provisions of this division will work unnecessary hardship on the property owner or tenant.

Section 12. City of Topeka Code § 130-176, Permit required; application; investigation; action, is hereby specifically repealed:

Permit required; application; investigation; action.

(a) It shall be unlawful for any person to cut, break or remove or in any manner displace or damage any curbing, gutter, street crossing, pavement or sidewalk or any part thereof in the city without first securing a permit from the development coordination office.

(b) An application for a permit under this section shall be made to the development
coordination office on a form supplied by the development coordination office for that purpose. The application shall state the location of the premises by block and lot number and the street number, or other sufficient description, the purpose for which the cutting or removal is to be done, and the extent of the curb, gutter, sidewalk or pavement to be removed, together with a diagram or sketch of the same.

(c) The development coordination office shall inspect or cause an investigation of the application under this section and if it is proposed to cut or remove a curb or gutter for the purpose of widening the street by cutting back the parkings on any street abutting upon a through street, major or minor trafficway or major thoroughfare.

Section 13. City of Topeka Code § 130-177, Method of cutting and removing, is hereby specifically repealed:

Method of cutting and removing.

Any curb, gutter, sidewalk or pavement required to be cut or removed under a permit shall be cut by the use of a concrete saw, unless in the opinion of the department of public works, engineering division other means of cutting and removal will not damage the remaining portion of the sidewalk, pavement, curbing or guttering.

Section 14. City of Topeka Code § 130-196, Supervision by city engineer; records, is hereby specifically repealed:

Supervision by city engineer; records.

(a) The city engineer shall superintend and inspect all street excavations and work done under the provisions of this division, subject to such orders, rules and regulations as may be made by the council. The work shall be done to the satisfaction of the city engineer.

(b) The city engineer shall keep records pertaining to such excavations and permits
therefor as a part of the records of the engineer's office.

Section 15. City of Topeka Code § 130-197, Unlawful acts, is hereby specifically repealed:

Unlawful acts.

Any person who shall make or attempt to make any excavation or refill an excavation, or do or attempt to do any other act in violation of the provisions of this division, or any person who shall remove or attempt to remove from the site of the excavation or other work any of the barricades, danger signals or lights required by the provisions of this division shall be deemed guilty of a misdemeanor.

Section 16. City of Topeka Code § 130-198, Barricades and warning devices, is hereby specifically repealed:

Barricades and warning devices.

(a)—All persons to whom any permit is issued under this division shall agree to and accept the following conditions:

(1)—Enclose all excavations which they may make in the public streets, avenues or alleys with adequate barriers and danger signals at all times, and in addition, shall maintain adequate warning lights at night. All warning devices shall comply with the manual on uniform traffic control devices for streets and highways;

(2)—Install and maintain additional barricades, signs and lights at both ends of the block in case the excavation is made between thoroughfare intersections causing restricted travel or dead-end conditions;

(3)—Furnish and install cones or signs to channel traffic around a barricaded area to maintain safe traffic lanes;
(4)—Erect and maintain a legible sign in a prominent place on the site of operations printed with letters and figures of three-inch minimum height displaying the name, city address and telephone number of the person responsible for work authorized by the permit; and

(5)—Take all necessary precautions to guard the public against all accidents from the beginning of the work to the completion of the work.

(b) It shall be the duty of every person who shall be in charge of an excavation which is accessible to the public for more than 30 days to cause such excavation to be securely guarded by a fence at least six feet in height. Further, at the commencement of any excavation within 15 feet of a city street, sidewalk or other public way, it shall be the duty of the person in charge of the excavation to cause such excavation to be securely guarded by a fence at least six feet in height. Any fence constructed under this subsection shall comply with all requirements of section 130-7 and appendix C and any subsequent provisions relating thereto.

Section 17. City of Topeka Code § 130-199, Bracing, is hereby specifically repealed:

Bracing.

The sides of all trenches and ditches six feet or more in depth, and of all trenches and ditches made in unstable or otherwise treacherous soil, and of all trenches and ditches near buildings, shall be so braced as to prevent their caving in or injury to the adjoining premises. The party excavating and the bondsman shall be liable to the city for all damages arising by reason of neglect or carelessness in this respect.

Section 18. City of Topeka Code § 130-200, Backfilling; restoration of
improvements, is hereby specifically repealed:

**Backfilling: restoration of improvements.**

All excavation and backfilling shall be made with such material and in such manner as may be directed by the city engineer or an authorized representative, and all replacement of pavement, gutters or macadam shall be done by persons who are experienced in such work and fully qualified to do such work in a proper and substantial manner. No backfilling under curbs, pavement, gutters or macadam shall be performed except in the immediate presence of and under the direction of the city engineer or an authorized representative. Any directions that may be given, either in writing or orally, by the city engineer or an authorized representative to any person engaged in making or backfilling any such excavation shall be immediately obeyed. The violation of such directions or the failure to perform such work shall be deemed a violation of the provisions of this division.

**Section 19.** City of Topeka Code § 130-201, Responsibility for adjacent excavations, is hereby specifically repealed:

**Responsibility for adjacent excavations.**

When one excavation is made adjacent or contiguous to or merging in or close to any other excavation, the party making the last excavation shall take precautions to prevent any settlement in the previous excavation or damage to the surface of the street, avenue or alley at the intersection of the excavations. Any such settlement or damage shall be repaired.

**Section 20.** City of Topeka Code § 130-202, Removal of pavement before repaving, is hereby specifically repealed:
Removal of pavement before repaving.

All persons making excavations through and under the paved streets, avenues or alleys of the city shall remove the pavement on each side of any excavation or opening to a minimum shoulder width on undisturbed soil of nine inches in order to partially transfer traffic loads on the pavement patch to soil adjacent to the excavation.

Section 21. City of Topeka Code § 130-203, Method and manner of cutting pavement, excavating, is hereby specifically repealed:

Method and manner of cutting pavement, excavating.

Any person making a street cut or excavation shall make it in the manner designated by the city engineer or an authorized representative. Any person making a cut, opening or excavation in any public street, alley or other public property shall execute the work in a complete and workmanlike manner, utilizing equipment and methods which will cause a minimum of damage to the structural elements of the pavement of the street, alley or right-of-way. The length and width of the cut or excavation shall be no greater than that necessary for doing the work. Whenever the entire width of a street must be traversed, only one-half of the width of the street, or less, shall be excavated at one time; thus permitting at least one full lane of traffic to operate at all times.

Section 22. City of Topeka Code § 130-204, Interfering with movement of traffic, is hereby specifically repealed:

Interfering with movement of traffic.

(a) When any cut or excavation is performed on any public street, it shall be properly backfilled to top of pavement or bridged or plated, as approved by the department of public works engineering division, to allow the operation of traffic thereon; except
between the hours of 8:30 a.m. to 4:00 p.m., or as provided for under subsection (b).

(b) When any cut or excavation is performed on any street, it shall be unlawful, without a traffic disruption permit issued by the development coordination office and approved by the traffic engineering department, to do any of the following acts:

(1) Leave any pavement material, stone and earth or any other material removed from street cuts, openings or excavations on the street before 8:30 a.m. or after 4:00 p.m.

(2) Perform any work which will require the closing of any lane of moving traffic between the hours of 7:00 a.m. and 8:30 a.m. or from 4:00 p.m. to 6:00 p.m.

(3) Do or perform any work or operation or to place any material, equipment, barricades or other obstructions in such a manner as to require the closing at any time of more than one lane of moving traffic on any street.

Section 23. City of Topeka Code § 130-205, Repair by city; costs, is hereby specifically repealed:

**Repair by city; costs.**

(a) If the proper backfilling, bridging, plating or paving of a cut or excavation is not made or if obstructions are placed in the street not in conformance with the provisions of this division, the department of public works shall perform the backfilling, bridging, plating or paving and remove such material, equipment, barricades or any other obstructions.

(b) The department of public works shall keep an accurate account of the cost of such operation required under subsection (a), and such cost, plus 100 percent for overhead, shall be charged to the person to whom the permit for such work was issued. No further excavation permits shall be issued to such person until such charges have been paid in full.
Section 24. City of Topeka Code § 130-206, Interference with work, is hereby specifically repealed:

Interference with work.

No person shall hinder or obstruct the making or repairing of any hole, ditch or excavation in any street, avenue, alley, park or parkings, pavement, sidewalk, crosswalk or easement through private property, which is being made or repaired in pursuance to any permit issued under this division.

Section 25. City of Topeka Code § 130-207, Removal of barricades, is hereby specifically repealed:

Removal of barricades.

It shall be unlawful for any person to break or tear down, remove or interfere with any barricade erected by order of the director of public works around any condemned sidewalk or areaway or any portion thereof.

Section 26. City of Topeka Code § 130-231, Required, is hereby specifically repealed:

Required.

No person shall open, uncover or in any manner make any connection with the public sewer system of the city, or lay or construct any sewer, drain, gas, steam, water or other pipe or conduit, or dig any hole, ditch or trench, or make any excavation or tunnel in or under any street, avenue, alley, park or parkings, pavement, sidewalk, crosswalk or easement through private property in the city, without first having taken out a permit and paid the fee therefor and given bond as provided in this subdivision. There shall be a separate permit for each specified piece of work.
Section 27. City of Topeka Code § 130-232, Application, is hereby specifically repealed:

Application:

Any person desiring to make any of the connections, lay any of the pipes or conduits or make any of the excavations or tunnels provided for in section 130-231, shall first make application to the city engineer for a permit therefor, which application shall contain:

1. The location or place at which the work is to be performed;
2. The purpose for which the work is intended;
3. The dimensions: length, breadth and depth thereof;
4. The time when the work is to be commenced thereon; and
5. The time required to complete the work.

Section 28. City of Topeka Code § 130-233, Fee; doubled for failure to obtain permit, is hereby specifically repealed:

Fee; doubled for failure to obtain permit.

(a) If the application is approved by the city engineer under section 130-232, the engineer shall issue the permit applied for upon the payment of a fee of $10.00 therefor, to cover in part the expense of regulating street excavations and issuing permits therefor, and such fee shall be paid to the city treasurer and the receipt thereof presented to the city engineer.

(b) Where any work as set forth in this division, for which a permit is required, is commenced or proceeded with prior to obtaining such permit, the fee specified in this section shall be doubled, but the payment of such double fee shall not relieve any person from fully complying with the requirements of this division in the execution of such work, nor
from any penalties prescribed in this division.

(c) An excavation permit issued pursuant to this division shall be valid for a period of seven calendar days. The seven-day period shall include an allowance of four days for inclement weather conditions. If work delay due to inclement weather exceeds four days, the development coordination office may grant an extension of time. In emergency situations where excavation work must be started prior to obtaining a permit, such as during holidays or evenings, the contractor or utility company shall obtain the permit the next working day. If the excavation work is not completed within seven days of the issuance of the permit, the permit may be extended by the city engineer for an additional fee of $10.00 per day. Where the excavation work is estimated to exceed seven days, not more than four days shall be granted for inclement weather delay.

Section 29. City of Topeka Code § 130-234, Grounds for denial, is hereby specifically repealed:

Grounds for denial.

If any person shall persistently fail, refuse or neglect to comply with the provisions of this division, or any reasonable orders and directions of the development coordination office in reference thereto, the development coordination office may refuse to issue any further permits to such party.

Section 30. City of Topeka Code § 130-235, Cash deposit required; conditions, is hereby specifically repealed:

Cash deposit required; conditions.

(a) No permit shall be issued to any person to make any connection with or lay any sewer, drain, gas, steam, water or other pipe or conduit or dig any hole, ditch or trench or
make any excavation or tunnel in or under any street, avenue, alley, pavement, sidewalk or crosswalk in the city without first having deposited with the city treasurer the sum of $25.00 in cash as a guarantee fund to cover the actual cost of repairing such excavation. Any person desiring to do any excavating as aforesaid shall, after depositing the sum of $25.00 with the city treasurer, receive the permit therefor as provided in this division, and shall replace and renew all curbing, guttering, paving or macadamizing or the surface of any street, avenue or alley in the city in as perfect and substantial condition as before being disturbed. Such work of repair shall be fully completed within five days after the expiration of the time granted in the permit to do such excavating. If the person obtaining such permit shall fail to make such repairs of the streets, avenues or alleys within the five days after the expiration of the time granted in the permit to do such excavating, as provided in this section, then the development coordination office may refuse to grant such person any further permits until such repairs are made by such person, or the director of public works may require that the city make such repairs and present to the city treasurer an itemized statement of the cost thereof, verified under oath that such statement of costs is correct, reasonable and just, and the city treasurer shall pay the claims out of the guarantee fund of $25.00. When such guarantee deposit fund of any person has been decreased by expenditures for repairs as provided in this division, no further permit shall be granted to such person until the person making application for such permit shall deposit with the city treasurer an amount sufficient to make up the full sum of $25.00.

(b) If a person discontinues excavation work in the city and desires to withdraw the deposit of $25.00, upon application therefor and after the expiration of two years from the date of the last work done under permits granted, such sum of $25.00 or any balance
remaining in the fund shall be returned to the depositor upon approval of the development coordination office.

Section 31. City of Topeka Code § 130-236, Issuance, is hereby specifically repealed:

Issuance.

All permits under this division shall be issued over the name of the city engineer.

Section 32. City of Topeka Code § 130-237, Bond required, is hereby specifically repealed:

Bond required.

(a) No permit shall be granted under this division unless the applicant gives or has given to the city a bond in the sum of $5,000.00, to be approved as to sufficiency by the city engineer and to be approved as to form by the city attorney, conditioned that the party will faithfully comply with all the terms and conditions of this division and all rules and regulations made in pursuance thereof, and indemnify and hold the city harmless against all costs, expenses, damages and injuries by the city sustained by reason of the carelessness or negligence of the party in operating under the provisions of this division, or by reason of any failure or neglect to comply with any of its provisions or any rules and regulations made in pursuance thereof.

(b) No bond issued under this section shall run for a longer period than two years without being renewed, and the bond shall remain in force and effect as to each excavation or piece of work done for two years after such excavation or work has been made or done.

(c) Any party having given a bond as a plumber or gasfitter under or pursuant to the ordinances of the city regulating the business of plumbing or gasfitting shall not be required
Section 33. City of Topeka Code § 130-238, Hold city harmless, is hereby specifically repealed:

Hold city harmless.

The permit holder under this division shall hold the city harmless from any and all claims or damages whatsoever to persons or property that may result from the excavation or for any liability for an accident to persons, animals, vehicles, conduits or property of any kind, where the accident has as its proximate cause the making of such excavation, and such persons shall also be liable to the city on their bond for such claims or damages.

Section 34. City of Topeka Code § 130-261, Definitions, is hereby specifically repealed:

Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial driveway approach—means driveway approaches to property whose land use conforms to the use regulations found in classifications of D multiple-family dwelling and/or higher classifications.

Curb opening—means a space to permit the entry or departure of a vehicle from the roadway to the driveway approach. The distance shall be measured between the two points at which the curb returns connect the roadway.

Curb return—means that portion of the curbing along the edge of any driveway approach from the roadway curb to the public sidewalk.
Driveway—means a place on private property for the operation of automobiles and other vehicles.

Driveway approach—means an area between the roadway and private property intended to provide access for vehicles from the roadway to private property.

Flare—means that part of the driveway approach that is wider than the driveway width at the property line. Its construction can be on a curve or a straight line.

Parkings—means that portion of any public right-of-way between the curb or lateral lines of a roadway and the adjacent property lines not occupied by a public sidewalk.

Property line—means a line dividing two adjacent properties, whether both are private properties, one private and the other public, or both are public properties.

Residential driveway approach—means driveway approaches to property whose land use conforms to the use regulations found in the following zoning district classifications: R-1 single-family dwelling, R-2 single-family dwelling and R-3 two-family dwelling.

Roadway—means that portion of any public right-of-way improved and accepted for vehicular travel.

Safety island—means that area along the curbline that is between two commercial driveway approaches.

Section 35. City of Topeka Code § 130-262, Standard plans and specifications, is hereby specifically repealed:

Standard plans and specifications.

(a) The city engineer is authorized to prepare standard plans and specifications for the construction of driveway approaches, sidewalk crossings and interior curbs which shall be furnished to any permittee upon application. It shall be the duty of the city engineer to
inspect all work authorized by a permit. Upon completion of any such work, the city engineer’s approval shall be entered on the permit. The city engineer shall preserve a permanent file of all permits issued and agreements entered into under the provisions of this division.

(b) If the permittee under this division fails to construct his driveway, sidewalk or interior curb in conformity with prescribed standards, the city reserves the right to remove and replace the nonconforming driveway approaches, sidewalk or interior curb. The cost of removal and replacement shall be levied as a special assessment on the piece of land abutting such driveway, sidewalk or interior curb.

Section 36. City of Topeka Code § 130-263, Entrance culverts, is hereby specifically repealed:

Entrance culverts.

(a) "Entrance culvert," for the purpose of this section, means a conduit or drainage pipe which is placed in the drainage ditch portion of the street right-of-way between the street and abutting property to allow entrance into driveways, while not obstructing the flow of water in the drainage ditch.

(b) All entrance culverts which may be out of repair or found insufficient shall be repaired or replaced by the owners of the lots or pieces of land abutting thereon.

(c) If the owners shall fail to repair, maintain or replace the entrance culverts in proper condition to facilitate drainage, then the city council, after having given five days' notice to the owner, if known, of the necessity thereof, and without notice if the land is unoccupied or the owner is unknown, may order by resolution all necessary repairs at any time. Such repairs shall be performed at the direction of the department of public works.
To pay for the costs of the replacement or repair of entrance culverts, service assessments shall be levied on the lots and pieces of land abutting on the culvert. Such assessments shall be in accordance with the provisions set out in article IV of chapter 126.

Section 37. City of Topeka Code § 130-264, Variances, is hereby specifically repealed:

Variances.

It is hereby recognized that variance from strict application of this division may be necessary or desirable to better fit existing physical conditions, traffic conditions or land uses. The city engineer with the concurrence of other applicable agencies is hereby authorized to grant, in writing, as a part of any permit issued by the city engineer, variances from the strict application of the provisions of this division, upon determining that any or all of the following conditions are present:

(1) The exception or variance desired arises from peculiar physical conditions not ordinarily existing in similar districts in the city or is due to the nature of business and operations on the abutting property.

(2) The exception or variance desired is not against the public interest, safety, convenience and general welfare.

(3) The granting of the permit for the exception or variance will not adversely affect the right of adjacent property owners or tenants.

(4) The strict application of the provisions of this division will work unnecessary hardship on the property owner or tenant.

Section 38. City of Topeka Code § 130-281, Crossing, cutting or breaking curbs, is hereby specifically repealed:
Crossing, cutting or breaking curbs.

It shall be unlawful for any person to drive or cause or allow or permit to be driven any vehicle or machinery over or across any curb or sidewalk in any street or avenue of the city, or to damage, break or cut any curb, gutter or sidewalk, except as may be authorized under a permit from the city issued in accordance with division 2 of this article and constructed in accordance with the provisions for driveway entrances in this division.

Section 39. City of Topeka Code § 130-282, Bridging curbs, interference with gutters; exceptions, is hereby specifically repealed:

Bridging curbs; interference with gutters; exceptions.

(a) It shall be unlawful for any person to bridge across any curb and gutter or fill any gutter with concrete, asphalt or other material for the purpose of gaining access to or egress from any driveway or private property, or to obstruct or interfere with the drainage of any gutter or drain at the edge of a roadway by placing therein any concrete, asphalt, planks, stones, earth or other material or substance for such purpose, except by written permit of the city engineer.

(b) Building materials may be stored in or alongside of any curb and gutter or any street parkings in accordance with a permit issued by the code enforcement director as provided by section 130-43 relating to the encumbering of streets for certain purposes.

(c) The department of public works may remove any existing material or any material placed across any curb or in any gutter or drain in violation of this section.

Section 40. City of Topeka Code § 130-283, Conditions of permits; cost of construction, is hereby specifically repealed:

Conditions of permits; cost of construction.
(a) All permits granted for the use of public property under the provisions of this subdivision shall be granted on condition that the permits are revocable at the discretion of the council, and no such permit shall be deemed to permit or authorize any violation of other provisions of this Code or other ordinances of the city. Any permit issued under this subdivision shall be granted on the further condition that the permittee or the permittee's successors in title will, upon the abandonment of any approach, restore and reconstruct the curb to its original condition upon written notice from the director of the department of public works. If the permittee fails to construct curb openings or driveway approaches and/or abandons existing driveway approaches in compliance with any permit issued pursuant to any provision of this division, the city reserves the right to construct driveway approaches where appropriate, close any abandoned driveway approach, and reconstruct the curb. Any such construction, reconstruction or closing of curbs or driveway approaches shall be performed by contract let to the lowest responsible bidder upon invitation by a notice published three consecutive days in the official city newspaper.

(b) The cost of the construction, reconstruction or closing of curbs or driveway approaches, including the cost of preparing plans and specifications and providing supervision of such work, shall be levied as a special assessment on the lot or piece of land abutting such curb or driveway approach.

Section 41. City of Topeka Code § 130-284, Disqualification for permits, is hereby specifically repealed:

Disqualification for permits.

Any person who has previously violated any provision of this division shall not be granted any permit under this subdivision unless and until the conditions causing the prior
violations have been remedied.

Section 42. City of Topeka Code § 130-301, Referral of application to city engineer and traffic engineer in unusual cases, is hereby specifically repealed:

Referral of application to city engineer and traffic engineer in unusual cases.

All applications submitted to the development coordination office for a permit which includes or involves unusual driveway approaches or problems shall be referred by the code enforcement officer to the city engineer and traffic engineer for their approval before a building permit is issued.

Section 43. City of Topeka Code § 130-302, Unlawful to extend, is hereby specifically repealed:

Unlawful to extend.

It shall be unlawful for any person to construct, alter or extend, or permit or cause to be constructed, altered or extended, any driveway approach which can be used only as a parking space or parking area between the curb and adjacent property line, unless specifically approved through a resolution by the council.

Section 44. City of Topeka Code § 130-303, Construction regulations, is hereby specifically repealed:

Construction regulations.

The construction or reconstruction of driveway approaches, including the cutting or removal of curbs or gutters, shall be authorized, upon application, in accordance with the following requirements:

(1) A driveway approach must provide access to private property adjacent to the
city street for some definite purpose such as a driveway, a parking area or a door at least
seven feet wide intended and used for the entrance of vehicles, and not for the parking or
servicing of vehicles on street rights-of-way.

(2) No driveway approach shall be constructed which will interfere with public
facilities including street light poles, traffic signal standards, signs, catchbasins, hydrants,
crosswalks, loading zones, utility poles, fire alarm supports, underground pipes or ducts, or
other necessary street structures without the concurrence in writing of the agency involved
with the facility.

(3) Not more than one driveway approach may be constructed for access to one
parcel of residential land less than 90 feet in width, except that driveway approaches may
be permitted from each roadway adjacent to a corner lot. Not more than one driveway
approach may be constructed along commercial property with frontage less than 135 feet.
Not more than two driveway approaches may be constructed along commercial property
with frontage less than 250 feet.

(4) To prevent encroachment on adjacent property, the entire driveway approach,
including the flared portions for turning purposes, must be constructed on the petitioner's
property frontage extended. Exceptions may be allowed by written consent of any adjacent
affected property owners. Extension of property frontage is to be determined by projecting
lines at right angles from the street centerline to the intersection of the abutting property
lines with the street right-of-way.

(5) Adequate drainage structures, as approved by the city engineer, shall be
provided at driveway or parking lot entrances by the petitioner.

(6) The placement of unauthorized signs, parked vehicles or any sight obstruction
on the street right-of-way is unlawful. Landscaping on the street right-of-way is permissible if shrubs are 30 inches or less in height from top of street pavement and all trees are properly trimmed so that sight distance is not restricted.

(7) As to the restricted area not on the street right-of-way, as covered by section 130-552, parked vehicles, sidewalk-type signs or any sight obstructions are prohibited for sight distance and safety reasons. Landscaping is permissible if shrubs are 30 inches or less in height from top of street pavement and all trees are properly trimmed so that sight distance is not restricted.

(8) Every effort shall be made to select driveway approach locations so maximum sight distance is possible. Existing medians will not be opened to accommodate abutting property other than crossovers placed by the city as a part of the design plans. No vehicle parking areas will be permitted on the right-of-way, and only those signs approved by the city shall be erected on the right-of-way.

(9) Where a driveway approach is serving more than a driveway or door on the private property, a nonmountable barrier curb shall be constructed and maintained on private property to prevent encroachment of vehicles or equipment upon public property except at the driveway approach.

(10) No driveway approach shall be constructed across any sidewalk unless such sidewalk is constructed or reconstructed in accordance with specifications pertaining to the construction of sidewalks to be used as driveway approaches.

(11) Where no sidewalk exists, that portion of the driveway approach adjacent to the property line shall be constructed as though a sidewalk did exist.

(12) No driveway approach shall be constructed in a manner so as to change or
interfere with the gutter flow line or sidewalk grade where such driveway approach crosses any such gutter or sidewalk.

(13) The sidewalk and curb shall, insofar as possible, be cut and removed at the nearest joint. Upon replacement and reconstruction of a sidewalk as a driveway approach, the construction of the curb return and any pavement in connection with a driveway approach, suitable joints shall be provided and all such spaces shall be filled with a bituminous fibrous compound in accordance with the specifications of the city. When it is not possible to cut and remove at an existing joint, such cutting shall be performed by using a concrete saw.

(14) The cost of construction of all driveway approaches and necessary appurtenances thereto shall be borne by the permittee.

Section 45. City of Topeka Code § 130-304, Width, is hereby specifically repealed:

Section 45. City of Topeka Code § 130-304, Width, is hereby specifically repealed:

(a) Residential driveway approach along nonmajor traffic streets. The width of a residential driveway approach along nonmajor traffic streets shall not be less than ten feet nor more than 20 feet measured parallel to the centerline of the street at the property lines, except for angular drives.

(b) Residential driveway approach along major traffic streets. The width of a residential driveway approach along major traffic streets shall not be less than 12 feet nor more than 24 feet measured parallel to the centerline of the street at the property lines.

(c) Commercial driveway approach along nonmajor traffic streets. The width of a commercial driveway approach on nonmajor traffic streets shall not exceed 30 feet nor be less than 25 feet measured parallel to the centerline of the street at the property lines of
two-way driveway approaches and 14 feet maximum if one-way, except in those instances involving a substantial volume of large trucks.

(d) Commercial driveway approach along major traffic streets. The width of a commercial driveway approach on major traffic streets shall not exceed 35 feet nor be less than 30 feet measured parallel to the centerline of the street at the property lines of two-way driveway approaches, and shall be 16 feet maximum if one-way.

Section 46. City of Topeka Code § 130-305, Angle of entrance, is hereby specifically repealed:

Angle of entrance.

The angular placement of driveway approaches for both residential and commercial properties may vary from 45 degrees to 90 degrees inclusive, provided, however, the flare of the driveway approach shall not encroach onto the 40-foot sight hazard triangle specified in section 130-552. This limitation includes the entire length of the driveway approach. The angle shall be that made by the centerline of the driveway approach with the centerline of the street or the tangent to the centerline at the point of intersection if located on a curve.

Section 47. City of Topeka Code § 130-306, Corner and adjacent line offset, is hereby specifically repealed:

Corner and adjacent line offset.

(a) Residential driveway approach. When residential driveway approaches are located at or near an intersection, in no case shall the distance from the intersection of adjacent street curblines or roadway at a corner be less than 40 feet to the near line of the driveway approach, extended to the street curb or pavement edge.

(b) Commercial driveway approach along nonmajor traffic streets. When
commercial driveway approaches are located at or near a street intersection, in no case shall the distance from the intersecting property corner be less than 30 feet to the near line of the nearest driveway approach, as extended to the street curb or pavement edge.  

(c) Commercial driveway approach along major traffic streets. When commercial driveway approaches are located at or near a street intersection, in no case shall the distance from the intersecting property corner be less than 60 feet to the near line of the nearest driveway approach for principal streets, or 50 feet to the near line of the nearest driveway approach for secondary streets, depending upon whether they are principal or secondary major traffic streets.  

(d) Curb tangent length of commercial driveway approach. No commercial driveway approach shall be constructed having a curb tangent length, between the curb return and the property line extended, of less than five feet.  

Section 48. City of Topeka Code § 130-307, Safety islands, is hereby specifically repealed: Safety islands. The minimum lengths of safety islands between driveway approaches shall be 25 feet. Length of safety islands is the tangent distance between the turning radii as measured along the surface edge or curbline, measured parallel to the centerline of the street.  

Section 49. City of Topeka Code § 130-308, Turning radii, is hereby specifically repealed: Turning radii. (a) For residential driveway approaches along nonmajor traffic streets, turning radii shall not exceed five feet.
(b) For residential driveway approaches along major traffic streets, turning radii shall not exceed ten feet.

(c) For commercial driveway approaches along nonmajor traffic streets:

(1) Safety island radii shall not exceed 20 feet, nor be less than ten feet.

(2) Approach radii shall not exceed 20 feet on a 90-degree driveway nor be less than 15 feet.

(3) Approach radii shall be no less than 15 feet on driveway approaches less than 90 degrees.

(d) For commercial driveway approaches along major traffic streets:

(1) Safety island radii shall not exceed 20 feet nor be less than ten feet.

(2) Approach radii shall not exceed 20 feet on a 90-degree driveway approach nor be less than 15 feet.

(3) Approach radii shall be no less than 15 feet on driveway approaches less than 90 degrees.

Section 50. City of Topeka Code § 130-309, Curb openings, is hereby specifically repealed:

**Curb openings.**

(a) Residential driveway approaches along nonmajor traffic streets. Curb openings for residential driveway approaches along nonmajor traffic streets shall not exceed 30 feet.

(b) Residential driveway approaches along major traffic streets. Curb openings for driveway approaches on major traffic streets shall not exceed 44 feet.

(c) Commercial driveway approaches along nonmajor traffic streets. Curb openings for commercial driveway approaches not on major traffic streets shall not exceed
70 feet. –

(d) Commercial driveway approaches along major traffic streets. Curb openings for commercial driveway approaches on major traffic streets shall not exceed 75 feet. –

Section 51. City of Topeka Code § 130-310, Removal when obsolete, is hereby specifically repealed:

Removal when obsolete.

Any existing driveway approach built for a purpose other than its present intended use shall be closed and the parking, curb and gutter restored to its original conditions by the owner of the property for which the building permit is sought.

Section 52. City of Topeka Code § 130-331, Placement of wires, is hereby specifically repealed:

Placement of wires.

All persons are hereby prohibited from stringing any wires overhead across any bridge owned or under the control of the city, and no wires either singly or in cables shall be placed or laid upon or across any of such bridges unless they are placed in proper conduits and laid in a careful and proper manner beneath the surface of the bridge and out of public view.

Section 53. City of Topeka Code § 130-332, Placement of pipes, is hereby specifically repealed:

Placement of pipes.

No gas, water or other mains or pipes shall be laid upon or across any bridge owned or under the control of the city unless such mains or pipes are of the most approved material and modern pattern and in cement concrete below the surface of the bridge and
out of public view.

Section 54. City of Topeka Code § 130-333, Removal of wires and pipes, is hereby specifically repealed:

Removal of wires and pipes.

In addition to all punishment, the department of public works shall remove all wires or pipes placed over, upon or across any of the bridges owned or under the control of the city which are in violation of this division.

Section 55. Original City of Topeka Code §§ 130-156 through 130-165, 130-176, 130-177, 130-196 through 130-207, 130-231 through 130-238, 130-261 through 130-264, 130-281 through 130-284, 130-301 through 130-310, and 130-331 through 130-333 are hereby specifically repealed.

Section 56. This ordinance shall take effect and be in force ninety (90) days after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council June 26, 2007.

CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk