

CHAPTER IV. PRIVATE PROPERTY

- Article 1. Building Code
 - Article 2. Electrical Code
 - Article 3. Electricians
 - Article 4. Plumbing Code
 - Article 5. Plumbers
 - Article 6. Mechanical Code
 - Article 7. Building Relocation
 - Article 8. Building Demolition
 - Article 9. Fire Code
 - Article 10. Environmental Code
 - Article 11. Excavation Permits
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ARTICLE 1. BUILDING CODE

4-101. *INTERNATIONAL BUILDING CODES INCORPORATED.*

There is hereby incorporated by reference for the purpose of providing minimum regulations for the construction, erection, remodeling, alteration, repair, or expansion of any building or structure, the **latest known published standard codes known as the “INTERNATIONAL BUILDING CODES, 2006 Edition,” and the NFPA-101 and/or the latest edition being used by the City of Herington including all Appendix Chapters hereby adopted and published by the International Code Council, be and is hereby adopted as the Building Code of the City of Herington, in the State of Kansas for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulation, provisions, penalties, conditions and terms of said Building Code on file in the office of the City of Herington are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any by the City of Herington, including all appendices to each, prepared and published in book form the by International Code Council, Inc. Any errata officially published by the International Code Council, Inc., shall become part of the International Building Code and/or the International Residential Code when placed on file by the**

administrative authority. If any conflict or discrepancy exists between this article and the referenced International Building Code or the International Residential Code, the provisions of this article shall rule.

Not less than three (3) copies of the **latest known published standard codes known as the “INTERNATIONAL BUILDING CODES, 2006 Edition,” and/or the latest edition being used by the City of Herington including all Appendix Chapters hereby adopted and published by the International Code Council**, shall be marked or stamped “Official Copy as Incorporated by Reference by the City of Herington, Kansas”, a copy of this ordinance shall be attached and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. All administrative departments of the City charged with enforcement of the Code shall be supplied, at the cost of the City, such number of official copies of the Code similarly marked, deleted and changed as may be expedient.

Any person violating any provisions of such Code shall be punished as provided in Section 4-104 of this Code.

4-102. DELETIONS FROM INTERNATIONAL BUILDING CODES.

The following portions are deleted from the International Building Codes as currently adopted:

- (a) No such deletions are currently made.

4-103. AMENDMENTS TO INTERNATIONAL BUILDING CODES.

(a) No building or structure shall be erected, enlarged, remodeled, or moved within the City without a permit therefore from the City Clerk who shall require a site plan and may require a plan of the proposed work together with a statement of the estimated cost of materials and labor to be used. Such permit shall be issued upon approval of the building official and conditional upon the compliance of the provisions of this article.

(b) For the purposes of this section, “remodeling” shall mean the reconstruction or alteration of any portion of a structure in which rooms are added, load bearing members are altered, or the alteration affects the life safety of the occupants of the structure.

(c) If construction is not started within six (6) months from the date of application, application shall be void and a new building application shall be made to the City Clerk.

(d) The fees for building permits shall be five dollars (\$5.00) for the first one thousand dollars (\$1,000.00) of project cost and an additional two dollars (\$2.00) for each additional one thousand dollars (\$1,000.00) or fraction thereof.

- 4-104. PENALTY.** Any person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.
- 4-105. VALIDITY.** The invalidity of any section of this article or the codes incorporated herein shall not invalidate other sections or provisions thereof.

ARTICLE 2. ELECTRICAL CODE

- 4-201. INTERNATIONAL ELECTRICAL CODE INCORPORATED BY REFERENCE** and the standard code known as the “National Electrical Code”, (Latest Edition in City Possession) is hereby incorporated by reference herein and made a part of this article, except such portions as may hereafter be deleted or amended.
- 4-202. ELECTRICAL INSPECTOR, QUALIFICATIONS.** The City Manager shall appoint an Electrical Inspector. The Electrical Inspector shall be of good moral character and shall be experienced in electrical construction and well versed in the rules and regulations of the National Electrical Code. An Assistant Electrical Inspector may be appointed if it is deemed necessary by the City Manager.
- 4-203. ELECTRICAL INSPECTOR, POWERS AND DUTIES.**
The Electrical Inspector or the Assistant Electrical Inspector shall:
- (a) Inspect all electrical light, heat and power wires, fixtures, appliances, conductors and apparatus hereinafter installed in or upon any and all buildings in the city.
 - (b) Enforce or cause to be enforced the provisions of this article and the National Electrical Code and for that purpose shall have and is given special police powers necessary therefor.
 - (c) Have the right, during reasonable hours, to enter into or upon any building, structure or premises in the city, for the purpose of making inspection of any electrical wires, installation or electrical apparatus to perform the duties imposed upon him by this article.
 - (d) No electric light or power wires or equipment shall be covered or concealed until it shall have been inspected and approved by the Electrical Inspector. All plumbing, water, steam and gas pipes and furnace stacks which are to be concealed shall be in place before electrical wiring will be inspected. The Electrical Inspector shall have authority to remove or cause to be removed

any lath, plaster or other finish which may interfere with the proper inspection thereof.

(e) The Electrical Inspector shall keep complete records of all permits issued, inspections made and certificates issued and all other official work performed under the provisions of this article.

(f) The Electrical Inspector shall decide all questions not provided for in this article, pertaining to the installation or use of electrical wires, appliances and apparatus.

(g) Any person feeling aggrieved at any decision of the Electrical Inspector shall have the right to appeal from such finding to the City Manager, whose decision shall be final.

- 4-204. PERMIT REQUIRED.** Any person, firm or corporation desiring to do any electrical work or to make any alteration or additions to any existing wiring in, upon or attached to any building or structure in the city shall make application in writing to the City Clerk for a permit, provided that no permit shall be required for maintenance or minor repairs.
- 4-205. APPLICATION FOR PERMIT.** Application for permits shall be made on blanks furnished by the city and shall set forth in detail such work to be done, class and location of building and the name of the owner.
- 4-206. QUALIFICATIONS FOR PERMIT.** Permits shall be issued to licensed electricians after they have filed the bond as required in Section 4-304 and paid the regular city license fee, provided that a permit may be issued to any person for any electrical work to be performed personally by such person upon any premises owned by him, except in the electrical wiring of buildings constructed or remodeled for purpose of sale or rent.
- 4-207. PERMIT: ISSUANCE.** If the proposed work complies with the provisions of this article, and the ordinances of the city, and the applicant meets with all the qualifications as herein provided, the City Clerk shall issue to such applicant a permit, reciting the location, type of work to be done and the name of the owner of the premises.
- 4-208. COMPLETION OF WORK: NOTICE TO INSPECT.** Upon the completion of any work in which a permit has been issued under the provisions of this article, it shall be the duty of the person installing the same to notify the Electrical Inspector that the same is ready for his inspection, after which such work shall be promptly inspected as provided in this article.

- 4-209. INSPECTION.** The Electrical Inspector or the Assistant Electrical Inspector shall inspect all installations of electrical wiring, fixtures and other equipment as required by this article within twenty-four (24) hours, exclusive of Sundays and legal holidays, of the receipt of notice that same is ready for inspection, and shall leave a suitable distinctive marker, if the work has been approved.
- 4-210. INSPECTION FEES.** No certificate of inspection shall be issued until there shall have been paid to the City Clerk an inspection fee of twenty dollars (\$20.00) per hour.
- 4-211. NOTICE TO CHANGE, REARRANGE, REMOVE.** If, upon inspection, the Electrical Inspector shall find that such wiring, fixtures or other equipment does not comply with the requirements of this article of the National Electrical Code incorporated herein and is unsafe and defective, the Electrical Inspector shall, in writing, notify the party or parties doing such work of such defect and order him to change, rearrange or remove the same within the time specified in the notice, and if such party or parties fail or refuse so to do within the time specified, such party or parties shall be deemed guilty of a violation of the provisions of this article; and each and every day which shall elapse after the expiration of the fixed time in said notice without a compliance with said order, shall be considered a separate offense.
- 4-212. CONDEMNING; CUTTING OFF CURRENT.** The Electrical Inspector shall have power and authority to condemn and cause the removal or necessary repair of any electrical wiring, fixtures, appliances, conductors, apparatus or supports in or upon any building, shop, outhouse, shed or other structure within the city which may be dangerous to life or property, and for that purpose is hereby given authority to require the cutting off the electric supply to such property until such repairs or changes are made.
- 4-213. PENALTY.** Any person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 3. ELECTRICIANS

- 4-301. ELECTRICIAN'S LICENSE REQUIRED.** No person shall engage in or work at the business of an electrician without obtaining a license therefor in accordance with the provisions of this article, provided that this shall not be construed to prohibit persons

employed by licensed electricians from performing such work under the supervision or at the direction of the employer responsible for such work.

4-302. EXAMINATION AND CERTIFICATION. Any person desiring to engage in or work at the business of an electrician, either as a Master electrician or a Journeyman electrician in the City of Herington, Kansas shall take the examination prepared by Prometric, 1260 Energy Lane, St. Paul, Minnesota 55108 or Prometric's successor so long as Prometric or any successor(s) are approved by the State of Kansas consistent with the requirements of K.S.A. 12-1525. Any such examination provided by Prometric or its successor(s) or any other preparer approved by the State of Kansas shall be designated as the standard examination for the certification and licensure of electricians in the City of Herington, Kansas. Additionally, any other preparer approved by the State of Kansas and in compliance with K.S.A. 12-1525 may, from time to time by duly adopted resolution of the City of Herington, Kansas may be designated as the standard examination for the certification and licensure of electricians in the City of Herington, Kansas. A minimum score of 70% on this examination is required for the licensure for both the Journeyman and Master examinations, provided that any person having a certificate issued by a board of examiners of electricians of any city in Kansas whose requirements relating to the issuance of certificates are equivalent to the provisions of this article shall, without further examination, and upon payment of the license fee and certification by the Board of Examiners to the City Clerk, be entitled to the appropriate license. Further, any person who has been licensed as an electrician for three (3) consecutive years may obtain a license without the examination requirement.

4-303. ISSUANCE OF LICENSES. Any person desiring to secure a license must first obtain a certificate from the Electrical Inspector as hereinbefore provided, such certificate must be presented to the City Clerk at the time of application, and no license shall be granted unless such certificate be presented. The fee for an electrician's license for the first year shall be one hundred dollars (\$100.00) and the renewal fee shall be twenty dollars (\$20.00) each year. The license of any person presently licensed shall be considered a renewal. All licenses shall expire on December 31st of each year and shall not be transferable. The Electrical Inspector may suspend for a definite period or may revoke any license issued hereunder for a just cause.

- 4-304.** **BOND.** No person, firm or corporation shall engage in business within the city as an electrician without first posting with the City Clerk as surety bond in the amount of two thousand dollars (\$2,000.00). Such surety bond shall be approved by the Electrical Inspector and provided that such person, firm, or corporation will faithfully comply with the provisions of state laws and city ordinances related to electrical wiring, and that such person, firm or corporation will indemnify and save the city harmless from all costs of damages sustained by persons or property because of the carelessness and negligence of the principal in conducting such electrical business. Bonds shall be in force at all times and remain in force and effect for a period of one (1) year after the completion of the work.
- 4-305.** **INSURANCE REQUIREMENTS.** No person shall perform any electrical work within the city without first filing with the City Clerk evidence of a current policy of public liability insurance in the following amounts: minimum of one hundred thousand dollars (\$100,000.00) for bodily injury liability and twenty thousand dollars (\$20,000.00) for the loss, destruction or injury of any property. Such policy shall be conditioned or extended to cover and include within its terms all employees and agents of the insured.
- 4-306.** **PENALTY.** Any person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 4. PLUMBING CODE

- 4-401.** **INTERNATIONAL PLUMBING CODE INCORPORATED BY REFERENCE TO THE LATEST INTERNATIONAL BUILDING CODE.** The standard plumbing code is hereby incorporated by reference to the latest International Building Code as currently adopted by the City of Herington including all Appendix Chapters adopted and published by the International Code Council, shall be and is hereby adopted as the Standard Plumbing Code of the City of Herington, in the State of Kansas for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures as herein provided; providing for the issuance of permits and collection

of fees therefore; and each and all of the regulation, provisions, penalties, conditions and terms of said Building Code on file in the office of the City of Herington are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any by the City of Herington.

- 4-402. DELETIONS FROM UNIFORM PLUMBING CODE.** The following portions are deleted from the International Building Codes as currently adopted:
- (a) No such deletions are currently made.
- 4-403. PLUMBING DEFINITION.** Plumbing shall mean the practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure or conveyance; also the practice and materials used in the installation, maintenance, extension or alteration of storm water, liquid waste or sewerage and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.
- 4-404. PLUMBING INSPECTOR, QUALIFICATIONS.** The City Manager shall appoint a Plumbing Inspector. The plumbing inspector shall be of good moral character and shall be experienced in plumbing and well versed in the rules and regulation of the IBC Plumbing Appendix Chapters therefore referring. An Assistant Plumbing Inspector may be appointed if deemed necessary by the City Manager.
- 4-405. PLUMBING INSPECTOR, POWERS AND DUTIES.** The Plumbing Inspector or the Assistant Plumbing Inspector shall:
- (a) Have supervision over all plumbing and house drainage done within the city, and all plumbing and house drainage done outside the city which plumbing and drainage connects either with the sanitary sewer system or water system of the city.
 - (b) Shall inspect all work under construction, alteration or repair, causing the same to be executed in accordance with rules and regulations herein established by persons having authority to perform such work, making as many inspections as may be necessary.

(c) Upon finding completed work to conform with authorized requirements, issue a certificate of approval, builders and owners to accept no plumbing work without such certificate.

(d) Cause defective plumbing or drainage work under construction to be removed and replaced with approved materials and workmanship at the expense of the plumber in charge.

(e) Keep a record of all inspections made and certificates of approval issued, such record to be a part of the files in the office of the City Clerk.

(f) Upon request, give information and advice as to the provisions of this article, and investigate violations thereof.

(g) Inspect either old or new plumbing in any building which is or may be occupied if there is reason to believe it is unsanitary or unsafe.

(h) Have the right of admission to premises at all reasonable hours to ascertain whether plumbing and drainage work are in conformity with regulations and ordinances.

(i) All unsanitary plumbing is hereby declared to be a nuisance and a detriment to health and the Inspector shall condemn the same and notify the owner or agent that the premises shall be made sanitary in every respect within a reasonable time, failure to comply with such order to be deemed cause for prosecution.

(j) Any person feeling aggrieved at any decision of the Inspector shall have the right to appeal from such finding to the City Manager, whose decisions shall be final.

4-406. PERMITS REQUIRED. No building or premises shall be connected with any public or private sewer or water main and no plumbing shall be installed or reconstructed without written permit issued by the City Clerk, granted upon written application giving the location of the premises and description of the work contemplated. Permits shall be issued only to bonded plumbers or bonded persons, firms or corporations employing a properly certified plumber, or to persons for any plumbing work to be performed personally by such person upon any premises owned by him, except in the plumbing of buildings constructed or remodeled for the purpose of sale or rent. All work shall be in charge of the plumber or person in whose name the permit is issued. No more work is to be done than is authorized in the permit, additional work requiring another permit. When alterations are to be made which cannot be practically constructed in accordance herewith, special permit may be issued by the Inspector, if in his judgment the conditions require it. No permit shall be required for minor repair work by which is meant repair of leaks in pipes, faucets, traps or cocks, opening up stoppage in waste or supply pipes, and traps or drains or replacing broken

fixtures when waste pipes are not disturbed and replacing frozen pipes inside of buildings.

- 4-407. COMPLETION OF WORK: NOTICE TO INSPECT.** Upon the completion of any work in which a permit has been issued under the provisions of this article, it shall be the duty of the person installing the same to notify the Plumbing Inspector that the same is ready for his inspection, after which such work shall be promptly inspected as provided in this article.
- 4-408. INSPECTION.** The Plumbing Inspector or the Assistant Plumbing Inspector shall inspect all plumbing as required by this article within twenty-four (24) hours, exclusive of Sundays and legal holidays, of the receipt of notice that same is ready for inspection, and shall leave a suitable distinctive marker, if the work has been approved.
- 4-409. INSPECTION FEES.** No certificate of inspection shall be issued until there shall have been paid to the City Clerk an inspection fee of twenty dollars (\$20.00) per hour.
- 4-410. OLD PLUMBING.** No owner or builder shall hereafter move, erect, remodel or repair any building so that the same or any part thereof is in violation of this article. The owner or contractor of any building may be compelled to submit plans and specifications for proposed plumbing work for approval or revision by the Inspector or Board of Examiners of Plumbers.
- 4-411. PLASTIC FITTINGS AND JOINTS.** Plastic joints and fittings shall be utilized and installed so as to conform with and to the currently adopted International Building Code incorporated herein by reference. All design, construction and workmanship shall be performed in accordance with the requirements of recognized standards of practice and by qualified mechanics to secure the results sought to be obtained by this code.
- 4-412. GROUNDING.** Grounding shall be done in accordance with and so as to conform to the currently adopted International Building Code incorporated herein by reference as well as the National Electric Code (NEC).
- 4-413. PENALTY.** Any person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 5. PLUMBERS

- 4-501. *PLUMBERS LICENSE REQUIRED.*** No person shall engage in or work at the business of plumbing without obtaining a license therefor in accordance with the provisions of this article, provided that this shall not be construed to prohibit persons employed by licensed plumbers from performing such work under the supervision or at the direction of the employer responsible for such work.
- 4-502. *EXAMINATION AND CERTIFICATION.*** Any person desiring to engage in or work at the business of a plumber, either as a master plumber or a journeyman plumber in the City of Herington, Kansas shall take the examination prepared by Prometric, 1260 Energy Lane, St. Paul, Minnesota 55108 or Prometric's successor so long as Prometric or any successor(s) are approved by the State of Kansas consistent with the requirements of K.S.A. 12-1525. Any such examination provided by Prometric or its successor(s) or any other preparer approved by the State of Kansas shall be designated as the standard examination for the certification and licensure of plumbers in the City of Herington, Kansas. Additionally, any other preparer approved by the State of Kansas and in compliance with K.S.A. 12-1525 may, from time to time by duly adopted resolution of the City of Herington, Kansas may be designated as the standard examination for the certification and licensure of plumbers in the City of Herington, Kansas. A minimum score of 70% on this examination is required for the licensure for both the Journeyman and Master examinations, provided that any person having a certificate issued by a board of examiners of plumbers of any city in Kansas whose requirements relating to the issuance of certificates are equivalent to the provisions of this article shall, without further examination, and upon payment of the license fee and certification by the Board of Examiners to the City Clerk, be entitled to the appropriate license. Further, any person who has been licensed as a plumber for three (3) consecutive years may obtain a license without the examination requirement.
- 4-503. *ISSUANCE OF LICENSES.*** Any person desiring to secure a license must first obtain a certificate from the Plumbing Inspector, as hereinbefore provided, and such certificate must be presented to the City Clerk at the time of application and no license shall be granted unless such certificate be presented. The fee for a plumber's license for the first year shall be one hundred dollars (\$100.00) and the renewal fee shall be twenty dollars (\$20.00) each year. The license of any person presently licensed shall be considered a renewal. All licenses shall expire on December 31st of

each year and shall not be transferable. The Plumbing Inspector may suspend for a definite period or may revoke any license issued hereunder for a just cause.

4-504. BOND. No person, firm or corporation shall engage in business within the city as a plumber without first posting with the City Clerk a surety bond in the amount of two thousand dollars (\$2,000.00). Such surety bond shall be approved by the Plumbing Inspector and provide that such person, firm or corporation will faithfully comply with the provisions of state laws and city ordinances related to plumbing and that such person, firm or corporation will indemnify and save the city harmless from all costs of damages sustained by persons or property because of the carelessness and negligence of the principal in conducting such plumbing business. Bonds shall be in force at all times and remain in force and effect for a period of one (1) year after the completion of the work.

4-505. INSURANCE REQUIREMENTS. No person shall perform any plumbing work in the city without first filing with the City Clerk evidence of a current policy of public liability insurance in the following amounts: minimum - one hundred thousand dollars (\$100,000.00) bodily injury liability and twenty thousand dollars (\$20,000.00) for the loss, destruction or injury of any property. Such policy shall be conditioned or extended to cover and include within its terms all employees and agents of the insured.

4-506. PENALTY. Any person, firm or corporation violating any of the provisions of this article shall upon conviction thereof be fined in any sum not exceeding five hundred dollars (\$500.00) or be imprisoned for not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 6. MECHANICAL CODE

4-601. INTERNATIONAL MECHANICAL CODE INCORPORATED BY REFERENCE TO THE CURRENTLY ADOPTED INTERNATIONAL BUILDING CODE REGULATING MECHANICAL STANDARDS. The standard code known as the International Mechanical Code, as currently adopted, is hereby Incorporated by reference herein and made a part of the Building Codes for the City of Herington, Kansas, except such portions as may hereafter be deleted or amended.

4-602. DELETIONS FROM INTERNATIONAL BUILDING CODES. The following portions are deleted from the International Building Codes as currently adopted:

(b) No such deletions are currently made.

- 4-603. GAS INSPECTOR.** The Plumbing Inspector shall perform the duties of Gas Inspector. The Plumbing Inspector shall inspect and test all new installations of gas piping and all extensions to or alterations of old installations in all buildings and structures; shall enforce, or cause to be enforced the provisions of this article; shall have the right, during reasonable hours, to enter any building for the purpose of making any inspection; and shall keep a record of all inspections of gas piping.
- 4-604. INSPECTIONS.** The person installing or altering any gas piping in any building or structure shall notify the Inspector when such work is ready for inspection. The whole system of gas piping shall be properly arranged for the Inspector to test the same. No Gas piping shall be concealed from view until the same has been inspected and approved by the Inspector. If upon inspection and test the gas piping in any building shall be found to comply with the requirements of this article, the Inspector shall issue a certificate of satisfactory inspection and shall attach a signed approval of such work. If, upon inspection and test, the installation does not comply with the requirements of this article, the Inspector shall at once notify the owner or agent of the building and the person installing such work and shall order such defects as found to be changed, rearranged or removed within five (5) days. Gas shall not be permitted to flow through such piping until the installation has been inspected and approved by the inspector.
- 4-605. PERMITS REQUIRED.** Any person desiring to install, alter, repair or extend any gas piping in any building or structure shall make application to the City Clerk for a permit therefor. Such application shall contain the location of such building, name and address of the owner and full and complete statement of the work proposed.
- 4-606. FEES.** No certification of inspection shall be issued until there shall have been paid to the City Clerk an inspection fee of twenty dollars (\$20.00) per hour.
- 4-607. PENALTY.** Any person, firm, or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 7. BUILDING RELOCATION

- 4-701. PERMIT REQUIRED.** It shall be unlawful for any person, firm, or corporation to move, haul, or transport, upon or across any street, alley or sidewalk in this city, any house, building, or other structure which exceeds the height, width, size or weight limitations provided by the laws of the State of Kansas for motor vehicles, after having been placed in final position for moving, without first obtaining a permit to do so as hereinafter provided.
- 4-702. BUILDINGS CONFORM TO EXISTING STRUCTURES IN AREA.** No permit shall be issued therefor, and no building shall be moved into, or from one location to another in the city unless the general height and outward appearance of such building conforms to the other buildings in the block to which it is to be moved and in the block opposite, to such an extent that its relocation shall have no substantial adverse effect on property values in the neighborhood.
- 4-703. APPLICATION FOR PERMIT.** All applications for moving permits shall be made in writing, upon forms provided by the City Clerk and shall be filed in the office of the City Clerk. The application shall include the day and hour the proposed moving is to commence and the route to be traveled. If it is to be necessary to cut, raise, or in any way interfere with any wires, poles, or other equipment, the application shall state the name of the owners of such wires, poles, or equipment, and the time and place when and where the removal of said poles or the cutting, raising or otherwise interfering with wires or other equipment will be necessary. The application shall be made not less than forty-eight (48) hours before the moving is to commence. The application shall be accompanied by a permit fee in the amount of actual cost (expenses incurred by the city). Appeals may be taken from the decisions of the City Clerk to the Board of Zoning Appeals.
- 4-704. APPLICATION; DETAILED DESCRIPTION.** In making application to move a building, the applicant shall furnish a detailed description of the building and the improvements, repairs or alterations to be made to it (including type, size and extent of foundation, type of exterior siding and roofing, extent of plumbing and electrical work) which shall, upon approval, become a part of the building permit. All buildings which are moved shall be set upon foundations and finished within six (6) months from the date of the permit. Buildings shall be inspected for structural stability before structural members (including floor joists, bearing walls and partitions, ceiling joists and roof trusses) are covered up. Members found to be unsafe shall be replaced and a reinspection called for. Plumbing and electrical systems shall meet all of the applicable requirements of the city codes.

- 4-705. NOTIFICATION OF WIRE OWNERS.** Upon the filing of such application the City Clerk shall give not less than twenty-four (24) hours notice, with all pertinent information, to the owners of the wires, poles, or other equipment to be affected by such moving.
- 4-706. DUTY OF OWNERS OF WIRES, POLES AND OTHER EQUIPMENT.** It shall be the duty of the person, firm or corporation owning or operating any of said poles, wires or other equipment to furnish sufficient and competent linemen or workmen to remove such poles or raise or move such wires or other equipment as may be necessary to facilitate the moving of such house or structure. The necessary expense which is incurred thereby shall be paid by the holder of the moving permit, unless the wires be less than eighteen (18) feet above the street, in which case the owners of the wires shall stand the expense of moving them.
- 4-707. NOTIFICATION; CHIEF OF POLICE.** The Chief of Police shall be notified by the City Clerk upon the filing of any application hereunder and shall examine the proposed route. If it shall appear that no other route may be used equally well and with less danger to persons and property then the chief may designate such other route as the one to be used. The police chief may also require such other safety measures to be taken as he shall deem advisable. The police chief shall inspect, from time to time, the progress of such moving to see that it is being done properly and in accordance with the provisions of this article and other applicable ordinances and laws.
- 4-708. DUTIES OF THE MOVER.** The holder of a moving permit granted hereunder shall observe all statutes, ordinances, rules and regulations relating to his or her operations and the relocating of the building in the city, including the cutting and trimming of trees.
- 4-709. BOND: INSURANCE.** All applications for a permit hereunder shall be accompanied by a bond, to be approved by the City Manager, executed by a bonding or surety company authorized to do business in the State of Kansas, in an amount of not less than twenty-five thousand dollars (\$25,000.00), conditioned upon saving harmless the City of Herington from any and all claims for personal injury or property damage caused directly or indirectly by the applicant's operations under a permit granted hereunder, and conditioned further upon the payment by the applicant of any and all damage to persons or property caused by negligence of the applicant, his or her agents or employees. A public liability insurance policy, issued by an insurance company authorized to do

business in the State of Kansas, and conforming to this section may be permitted in lieu of a bond.

- 4-710. STANDARDS FOR ISSUANCE OF PERMIT.** The City Clerk shall refuse to issue a permit hereunder if he or she finds that any application requirement has not been complied with or that for any reason persons or property in the city would be endangered by the moving of the building or other structure, or that the building code, or other ordinances would be violated by the building in its new location.

ARTICLE 8. BUILDING DEMOLITION

- 4-801. PERMIT.** It shall be unlawful for the owner or owners of any house, building or structure to wreck or tear down, or cause to be wrecked or torn down any house, building or structure in any manner whatsoever, or for any person, firm or corporation to assist in the wrecking, dismantling, or tearing down of any house, building or other structure without first obtaining a permit for such work.
- 4-802. PERMIT APPLICATIONS.** Applications for permits to wreck, tear down, or dismantle any structure shall be filed with the City Clerk and shall set out the description of the structure and its location and detailed plans of the proposed work.
- 4-803. BOND.** No permit to wreck, dismantle, or tear down any house, building or other structure shall be issued or granted until the owner or owners shall have filed with the City Clerk a bond in an amount to be fixed by the City Manager. The bond shall be signed by not less than two (2) sureties to be approved by the City Manager or until, in the alternative, the owner or owners shall have paid to the City Clerk a cash deposit in an amount fixed by the City Manager. The bond or cash deposit shall be for protection of the city, the public, and adjacent lot owners and shall be to secure the payment of all damages of any kind or nature arising from the operations of wrecking, dismantling, or tearing down of the house, building, or other structure and to secure the strict compliance of the owner or owners and the person, firm, or corporation assisting in such operations with the provisions of this article regulating the wrecking, dismantling or tearing down of such house, building or other structure. A public liability insurance policy, issued by an insurance company authorized to do business in the State of Kansas, and conforming to this section may be permitted in lieu of bond.
- 4-804. DEMOLITION; REQUIREMENTS.** Every person or persons, who shall wreck, dismantle, or tear down any house , building, or other

structure, shall within ninety (90) days from the start of the work of wrecking, dismantling, or tearing down unless a shorter time is specified by the permit, clear or cause to be cleared from the lot, lots, or tract left vacant by such moving, all trash, debris, junk, and discarded building materials not to be used immediately in rebuilding and shall remove all foundations or parts of foundations at least one (1) foot below ground level unless another house, building, or other structure is to be erected immediately upon the foundations, as specified in the application for the permit; and shall fill in all open wells and cisterns and all cellars, basements, or other excavations remaining on such lot, lots, or tract, unless the same are to be used immediately in connection with other structures to be erected.

4-805. PUBLIC SAFETY. It shall be unlawful for the owner or any person, firm or corporation assisting in the work or wrecking, dismantling, or tearing down any house, building, or other structure, to leave any structure, portion of a structure, building materials, or any excavation in such a condition as to constitute a menace to the public health or safety or to constitute a fire hazard or which may be or may become a nuisance.

4-806. FAILURE TO COMPLETE WORK. Upon the failure or neglect of the owner or owners of such house, building, or other structure or of any person, firm or corporation assisting in the work of wrecking, dismantling, or tearing down such house, building, or other structure to fully comply with the provisions of Section 4-804 of this article, the governing body may cause all work to be done necessary for compliance with the provisions of Section 4-804, and the bond furnished under the provisions of this article shall secure the payment of the expense thereof or if a cash deposit has been made, such expense shall be deducted from such cash deposit.

4-807. PENALTY. Any person, firm or corporation violating any of the provisions of this article or failing or refusing to perform any duty imposed by this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00), or be imprisoned not to exceed thirty (30) days, or be both fined and imprisoned.

ARTICLE 9. FIRE CODE

4-901. INTERNATIONAL FIRE CODE INCORPORATED BY REFERENCE TO THE LATEST INTERNATIONAL BUILDING CODE AND NFPA-101. The standard fire code is hereby incorporated by reference to the latest International Building Code

and NFPA-101 adopted by the City of Herington including all Appendix Chapters adopted and published by the International Code Council, shall be and is hereby adopted as the Standard Fire Code of the City of Herington.

- 4-902. *FIRE INSPECTOR.*** The Fire Chief or his designated subordinates shall perform the duties of Fire Inspector. The Fire Inspector shall inspect and test all buildings and structures; shall enforce, or cause to be enforced the provisions of this article; shall have the right, during reasonable hours, to enter any buildings for the purpose of making any inspection; and shall keep a record of all fire inspections.
- 4-903. *RESPONSIBILITY OF FIRE CHIEF.*** The Fire Chief and or the chief's delegated subordinates will be charged with the responsibility of insuring that controlled burns are carried out in accordance with state and city statute.
- 4-904. *BURNING ON PUBLIC PROPERTY PROHIBITED, EXCEPTIONS.*** Burning on Public property is prohibited except for cooking purposes in a grill, fireplace or barbecue facility, or in a designated fire pit located at Herington Lake/Reservoir. The Fire Chief or his subordinate shall have the right to band out door cooking and fire pit burning on any public property if in his opinion fire safety is a concern.
- 4-905. *OPEN BURNING ON PRIVATE PROPERTY.*** That no person, within the city limits of the City of Herington, Kansas shall cause or permit the open burning of any material except as provided in Kansas Administrative Regulation 28-19-645, et seq. and subject to the following:

The person starting said burn must give prior notification to the Herington Fire Department of Herington, Kansas at 785-258-3020, or the Dickinson County Emergency Communications Center at 785-263-4041 or 1-888-800-0417, providing the following information:

- (a) Name, address, phone number of person responsible for burn.
- (b) Exact location of intended open burning operation.
- (c) Type of material being burned.
- (d) Time of burning operation. Person must call in prior to starting the fire.

The responsible person shall remain in continuous attendance with the burning operation and with the ability to extinguish the fire and report its status if necessary to the Dickinson County Emergency Communications Center.

No burning shall take place within 150 feet of any structure, oil tank or vehicle(s).

No burning shall take place when wind speeds are 15 mph or greater.

Burning shall not be initiated after sunset or before sunrise unless conducted for agricultural or crop rotation purposes.

Burning of any type or character shall be prohibited at any time or place within the city limits at any time that a county burn ban is in effect as declared by Dickinson County, Kansas.

That a violation of this ordinance shall be a Class B misdemeanor with a fine not to exceed \$1,000 and/or up to six (6) months incarceration. Prosecution shall be in the Municipal Court of the City of Herington, Kansas. Further, any person starting said fire without complying with the above may be ordered to make restitution for any damages done including fire department fees and expenses.

4-906. DAMAGED STRUCTURES BY FIRE OR EXPLOSION. Be it ordained by the Governing Body of the City of Herington, Kansas that:

(a) SCOPE AND APPLICATION. The City is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire or explosion, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of seventy-five percent (75%) of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

(b) LIEN CREATED. The Governing body of the City hereby creates a lien in favor of the City on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the City, caused by or arising out of any fire or explosion, where the amount recoverable for all the loss or damage to the building or other

structure under all policies is in excess of seventy-five percent (75%) of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the City which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one (1) year prior to the filing of a proof of loss.

(c) SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by Section (b), the insurer or insurers shall contact the County Treasurer, Dickinson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the County Treasurer, Dickinson County, Kansas.

(d) SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

(e) PROCEDURE.

(1) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds seventy-five percent (75%) of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the City Treasurer in an amount equal to the sum of five thousand dollars (\$5,000.00) or ten percent (10%) of the covered claim payment, whichever is less, unless the chief building inspector of the City has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(2) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the City shall be disbursed in accordance with the policy terms.

(3) Upon the transfer of the funds as required by subsection (1) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the

total amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the City and apprise them of the procedures to be followed under this ordinance.

(f) FUND CREATED; DEPOSIT OF MONEYS. The City Treasurer is hereby authorized and shall create a fund to be known as the "Fire Insurance Proceeds Fund." All moneys received by the City Treasurer as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

(g) BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(1) Upon receipt of moneys as provided for by this ordinance, the City Treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(2) Within twenty (20) days of the receipt of said moneys, the chief building inspector shall determine, after prior investigation, whether the City shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(3) Prior to the expiration of the twenty (20) days established by subsection (2) of this section, the chief building inspector shall notify the City Treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(4) If the chief building inspector has determined that proceedings under K.S.A. 12-1750 et seq., as amended, shall be initiated, he or she will do so immediately but no later than thirty (30) days after receipt of the moneys by the City Treasurer.

(5) Upon notification to the City Treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the City Treasurer shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within thirty (30) days of the receipt of the moneys from the insurance company or companies.

(h) REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief building inspector has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the

removal of the building or structure, less salvage value, if any, shall be paid to the insured.

(i) **SAME; DISPOSITION OF FUNDS.** If the chief building inspector, with regard to a building or other structure damaged by fire or explosion, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the City Treasurer under the authority of Section (e) (1) relating to that building or other structure shall be used to reimburse the City for any expenses incurred by the City in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the City exceed the insurance proceeds paid over to the City Treasurer under Section (e) (1) the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

(j) **EFFECT UPON INSURANCE POLICIES.** This ordinance shall not make the City a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

(k) **INSURERS; LIABILITY.** Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or leasing or disclosing any information pursuant to this ordinance.

4-907. PENALTY. Any person, firm, or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00, or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 10. ENVIRONMENTAL CODE

4-1001. LEGISLATIVE FINDING OF FACT. The governing body has found that there exist within the city unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding,

fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanness; unsightly stored or parked material, equipment, supplies, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided.

4-1002. PURPOSE. The purpose of this article is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof. (Code 1988)

4-1003. RULES OF CONSTRUCTION. For the purpose of this article, the following rules of construction shall apply:

(a) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."

(b) Gender - Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.

(c) Number - Words of number shall be construed to mean singular or plural, as may be applicable.

(d) Tense - Words of tense shall be construed to mean present or future, as may be applicable.

(e) Shall - The word shall is mandatory and not permissive. (Code 1988)

4-1004. DEFINITIONS. The words and phrases listed below when used in this article shall have the following meanings:

(a) Abandoned Motor Vehicle - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of the code; or incapable of moving under its own power; or in a junked or wrecked condition.

(b) Accessory Structure - a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.

(c) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.

(d) Dilapidation, Deterioration or Disrepair - shall mean any condition characterized by, but not limited to: holes, breaks, rot,

decay, crumbling, cracking, peeling, or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.

(e) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.

(f) Garbage - without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.

(g) Person - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.

(h) Premises - any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.

(i) Refuse - garbage and trash.

(j) Residential - used or intended to be used primarily for human habitation.

(k) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.

(l) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, excelsior, furniture, bedding, rags, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings.

(m) Weathered - deterioration caused by exposure to the elements.

(n) Yard - the area of the premises not occupied by any structure.

4-1005. PUBLIC OFFICER. The city manager shall designate a public officer to be charged with the administration and enforcement of this article.

4-1006. ENFORCEMENT STANDARDS. No person shall be found in violation of this article unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions

exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under Section 8 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

4-1007. UNLAWFUL ACTS. It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the city. For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:

(a) Exterior conditions (yard) shall include, but not be limited to, the scattering over or the parking, leaving, depositing or accumulation on the yard of any of the following:

(1) Lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk or refuse;

(2) Abandoned motor vehicles; or

(3) Furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, or other such items of personal property.

(4) Nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.

(b) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:

(1) Exteriors of any structure;

(2) Exteriors of any accessory structure; or

(3) Fences, walls, or retaining walls;

(4) Missing or broken doors and/or windows;

(5) Known or reasonably suspected utility problems;

(6) Evidence of the presence of vermin;

(7) Extended vacancy with regular maintenance;

(8) Lack of heat, water, sewer, gas, or electricity;

(9) Fire or other suspected hazard dangerous for human occupation.

4-1008. NOTICE. Any person found by the public officer to be in violation of section 8-208 shall be sent a notice of such violation by the public officer. The notice shall be sent by certified mail, postage prepaid, return receipt requested. The notice shall state:

(a) The condition which has caused the violation of this article; and

- (b) That the person in violation shall have:
 - (1) 15 days from the date of the mailing of the notice to alleviate the exterior conditions (yard) violation; and/or;
 - (2) 45 days from the date of the mailing of the notice to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above,
 - (3) 15 days from the date of the mailing of the notice to request, as provided in section 8-213 a hearing before the governing body on the matter; and
- (c) That failure to alleviate the condition or to request a hearing may result in prosecution under Section 10 and/or abatement of the condition by the city according to Section 11 with the costs assessed against the property under Section 14.

4-1009. PENALTY. The public officer may file a complaint in the municipal court against any person found to be in violation of Section 8, provided however, that such person shall first have been sent a notice as provided in Section 9 and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 9. Upon such complaint in the municipal court, any person found to be in violation of Section 8 shall upon conviction be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment, for each offense. Additionally, the Court may order the premises vacated as warranted until the nuisance is fully abated. For the purposes of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

4-1010. ABATEMENT. In addition to, or as an alternative to, prosecution as provided in section 8-210, the public officer may seek to remedy violations of this article in the following manner. If a person to whom a notice has been sent pursuant to section 8-209 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 9, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 20 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be assessed against the property as provided in Section 14. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;

(b) Service by certified mail, postage prepaid, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such conditions exist.

4-1011. HEARING BEFORE GOVERNING BODY. If a hearing is requested within the 15 day period as provided in Section 9 such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the manner provided in Section 11.

4-1012. APPEALS. Any person affected by any determination of the governing body under sections 8-211 or 8-212 may appeal such determination in the manner provided by K.S.A. 60-2101. (Code 1988)

4-1013. COSTS ASSESSED. If the city abates the conditions in violation of this article pursuant to Section 11, the cost of abatement shall be charged against the lot or parcel of ground on which the conditions were located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

4-1014. CONSTRUCTION. Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or

punish violations thereof. The powers conferred by this article shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance.

ARTICLE 11. EXCAVATION PERMITS

- 4-1101. EXCAVATION PERMITS REQUIRED.** Any excavation within the City of Herington, including any property held, under the exclusive control of, or owned by the City exclusive of street and alley opening permits and emergency excavation by the city for the purpose of maintaining potable water and sanitary leads, sewer repair, and electrical service repair shall have, prior to undertaking any excavation, have procured a lawful permit through the City. Street and alley openings shall have a street excavation permit as required in Sections 6-508 through 6-510 of this Code inclusive.
- 4-1102. REQUIRED INFORMATION FOR PERMIT ISSUANCE.** All excavation permits shall contain information identifying the location, dimensions, setbacks, whether permanent or temporary, purpose, and if temporary, the length of time the excavation shall exist. All forms for issuance of such permits shall be provided by the City of Herington.
- 4-1103. PUBLIC PROTECTION.** Excavations, permanent or temporary, shall be enclosed by fence of no less than four feet in height. Temporary fences shall be made of a blaze orange material, snow fencing, or a woven wire material placarded in blaze orange. Permanent excavations shall be enclosed of a permanent fence or wall not less than four (4) feet in height and of sufficient design as to reasonably protect the public from injury.
- 4-1104. NOTIFICATION.** Any holder of an excavation permit issued by the City of Herington shall contact the necessary public entities including but not limited to Kansas Dig Safe (1-800-Dig Safe; 1-800-344-7233) and no excavation shall commence before the Dig Safe representative identifies underground utilities.
- 4-1105. PENALTY.** Failure to obtain an Excavation Permit as required herein shall be deemed a violation of City Code and, upon conviction, a fine of not less than \$100.00 nor more than \$500.00 per day shall be levied. The excavation shall be ordered closed forthwith. Each day following the date of the order of closure issued by the City of Herington shall constitute a separate offense.