

**CITY OF FAIRWAY, KANSAS
ORDINANCE NO. 1792**

**AN ORDINANCE AMENDING THE FAIRWAY CITY CODE
PERTAINING TO PUBLIC RIGHT-OF-WAY USE AND EXCAVATION;
PROTECTION OF THE PUBLIC; AMENDING AND REPEALING
CHAPTER 9, ARTICLE III, DIVISION 1, SECTION 9-76 OF THE
FAIRWAY CITY CODE.**

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

SECTION 1. Existing Chapter 9, Article III, Division 1, Section 9-76 of the Fairway City Code is hereby amended to read as follows:

Sec. 9-76. Protection of the public.

- (a) It shall be the responsibility of the ROW user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- (b) The City shall not be liable for any damage to or loss of any of the ROW user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.
- (c) The ROW user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them, including, but not limited to, delay damages, repair costs, downtime, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW user.
- (d) The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- (e) Any ROW user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- (f) Whenever a ROW user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate

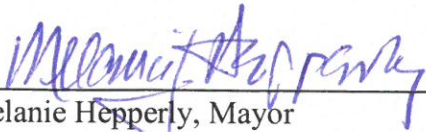
passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.

- (g) Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- (h) Every permittee shall notify the occupants of all properties within two hundred feet (200') of the work, provided that the Public Works Director may waive or modify this notification requirement in those limited instances where the Director determines the modification or waiver will not adversely impact the public health, safety or general welfare. There shall be notification, to each such occupant, which notification shall be in the form of a door hanger and shall be received by each occupant no later than three (3) days before the commencement of work. This door hanger notification shall include:
 - (1) Scope of project;
 - (2) Construction schedule, including the date of commencement and expected completion of work;
 - (3) Name of field superintendent; and
 - (4) Telephone numbers (office and mobile) and electronic mail addresses for permittee personnel who can timely provide additional project information as needed.
- (i) Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW user may require such payment in advance. The ROW user must be given not less than fifteen (15) days' written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24) hours' advance notice from the person advising of the actual operation.
- (j) In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost at the discretion of the Public Works Director. Further, in review of the ROW-user's plan, Public Works Director, in his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

SECTION 2. Existing Chapter 9, Article III, Division 1, Section 9-76 of the Fairway City Code is hereby repealed.

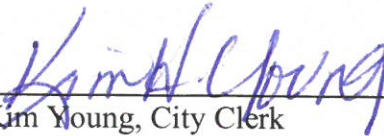
SECTION 3. This Ordinance No. 1712 shall become effective upon adoption and publication in the official City newspaper.

PASSED by the City Council the 9th day of October, 2023. **APPROVED** by the Mayor.




Melanie Hepperly, Mayor

ATTEST:



Kim Young, City Clerk

APPROVED AS TO FORM:



Richard Cook, City Attorney