

**CHAPTER 14****LICENSES****Sec. 14-1. City license officer.**

The city license officer shall be the city clerk. The city license officer shall collect all license fees and shall issue licenses in the name of the city to all persons qualified under the provisions of this chapter. (Code 1976, § 9-105)

**Sec. 14-2. License or permit required.**

It shall be unlawful for any person, either directly or indirectly, to conduct any business or nonprofit enterprise, or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license or permit is required by any law or ordinance of this city, without a license or permit therefor being first procured and kept in effect at all such times as required by law or ordinance of this city. (Code 1976, § 9-102)

**Sec. 14-3. No license required for mere delivery.**

No license shall be required of any person for any mere delivery in the city of any property purchased or acquired in good faith from such person at his regular place of business outside the city where no intent by such person is shown to exist to evade the provisions of this chapter. (Code 1976, § 9-103)

**Sec. 14-4. Permits for nonprofit enterprises.**

The city license officer shall issue special permits, without the payment of any license fees or other charges therefor, to any person or organization for the conduct or operation of a nonprofit enterprise, either regularly or temporarily, when he or she finds that the applicant operates without private profit, for a public, charitable, educational, literary, fraternal, or religious purpose. (Code 1976, § 9-104)

**Sec. 14-5. Application.**

In the absence of provisions to the contrary, every person required to procure a license under the provisions of any ordinance or law of the city shall submit an application for such license to the city license officer. (Code 1976, § 9-109)

**Sec. 14-6. Issuance of licenses generally.**

- (a) The city license officer shall not issue a license until the applicant applying for a license shall have paid the license officer the prescribed sum for such license. The license forms shall be approved by the city attorney. Prior to issuance of a license, it

shall be signed by the mayor, attested by the city clerk, countersigned by the treasurer and the corporate seal shall be affixed thereto.

- (b) The general standards therein set out relative to the qualifications of every applicant for a city license shall be considered and applied by the city license officer prior to the issuance of a license. (Code 1976, §§ 9-105, 9-107)

**Sec. 14-7. Term.**

All licenses, except as otherwise specifically provided for by ordinance, shall expire on December 31 of each year. (Code 1976, § 9-110)

**Sec. 14-8. Due date and penalty for late payment.**

All occupational licenses that are required to be obtained from the City are due January 1 of each year and shall be delinquent on March 1 of the licensing year. If such delinquency occurs, a monthly delinquent charge equal to 1/12 of the license fee shall be assessed retroactive to January 1 of the licensing year for administrative service in addition to the regular occupational licensing fee. (Ord. No. 802, § 3, 10-16-78; Ord. No. 1105, § 1, 12-3-90, Ord. No. 1447, § 1, 07-28-03)

**Sec. 14-9. Proration of fee.**

Any business commenced and applying for a license during the first six (6) months of the calendar year shall pay a fee based on the full calendar year, and any business commencing after the last day of June of the calendar year shall pay one-half of the license fee as set forth herein. (Code 1976, § 9-111)

**Sec. 14-10. License form.**

Prior to the issuance of any license, it shall be signed by the mayor, attested by the city clerk, countersigned by the treasurer and the corporate seal shall be affixed thereto. (Code 1976, § 9-105)

**Sec. 14-11. Display of license and insignia.**

Every licensee under this article shall post and maintain such license upon the licensed premises in a place where it may be seen at all times and shall affix any insignia delivered for use in connection with business premises, if any. (Code 1976, § 9-113)

**Sec. 14-12. Entry power of city officials.**

Subject to constitutional limitations, all persons authorized to inspect licenses and businesses shall have the authority to enter the licensed premises at all reasonable times. (Code 1976, § 9-114)

**Sec. 14-13. Provisional order.**

When an inspector has reported the violation by a licensee or permittee of any law or ordinance the license officer shall issue to the affected person a provisional order to comply. The provisional order shall require compliance within seven (7) days of personal service on the affected person. (Code 1976, §§ 9-115, 9-116)

**Secs. 14-14--14-35. Reserved****ARTICLE II. OCCUPATIONAL LICENSE FEES****Sec. 14-36. Generally.**

Every person engaged in any business, occupation, pursuit, profession, institution, establishment, massage establishment, article, utility or commodity specified in this Article shall pay for a license from the City. The fee for such license shall be in the respective amounts set forth in the fee schedule maintained by the City Clerk and updated annually. Copies of such schedule shall be available to the public upon request. License fees shall be increased annually by an amount equal to the percentage of the increase in the Consumer Price Index over a base year of 1989, measured in October of each year, with the 1991 increase to be 6.3%; and provided further, that such increases shall be rounded to the nearest Dollar. (Code 1976, § 9-118; Ord. No. 1105, § 2, 12-3-90; Ord. No. 1260, §1, 7-22-96; Ord. No. 1279, §1, 10-28-96)

**Sec. 14-37. Retail establishments generally; others.**

All establishments engaged in the retail sale of food and/or personal property, and all trades and businesses for which there is no occupational license fee set forth on the schedule described in Section 14-36, shall pay an occupational license fee computed on the basis of interior square footage of the building (or portion thereof) occupied by the establishment and, in the event of outdoor displays or sales, one-half of the square footage calculated above will be added. (Ord. No. 1260, §1, 7-22-96)

**Sec. 14-38. Landlords, generally.**

- (a) All persons engaged in the business of owning and leasing or of leasing of single family homes, apartments, duplexes and all other rental property shall pay an occupational license fee as set forth on the schedule of fees described in Section 2-110 and no license shall be issued until such fee has been paid to the City Clerk. Such fee shall be deposited in the general fund of the city. (Ord. No. 1260, §1, 7-22-96; Ord. No. 1487, §1, 10-25-04)
- (b) In the event rental property is offered for lease for the first time after commencement of any license year, the owner or the leasing agent shall, within thirty (30) days thereafter, file the declaration and pay the applicable occupational license fee. (Code 1976, § 9-118(a), Ord. No. 1260, §1, 7-22-96)

- (c) The City reserves the right to conduct biennial inspections of each property defined in subsection (a), used wholly or in part for residential purposes, to determine compliance with the Code of Ordinances, including applicable fire, safety and building codes. Provided, however, that nothing herein contained shall limit the City from making more frequent inspections at the request of any property owner, tenant, user, occupant or other interested party. (Ord. No. 1280, § 1 11-25-96)

**Sec. 14-39. Auctioneers.**

- (a) Auctioneers conducting on site auctions from a permanent auction house or other permanent place of business properly zoned in the City shall pay the fee set forth in the fee schedule maintained by the City.
- (b) Auctioneers conducting auctions off of the site of the permanent place of business of the auctioneer shall pay the fee set forth in the fee schedule maintained by the City. In addition, the following conditions to the license shall apply:
  - (i) In the event the auction is held in or within two hundred and fifty (25) feet of a residential zoning district, all owners of real property within two hundred and fifty (250) feet of the site of the auction and the Police Department of the City shall be notified in writing by the auctioneer of the date, time and place of the auction at least 10 days prior to the date of the auction.
  - (ii) No goods, merchandise or other personal property shall be brought or delivered to the site of the auction from greater than two hundred and fifty (250) feet from the site of the auction. The foregoing will also apply to pictures, depictions, descriptions, or displays of goods, merchandise or other personal property located outside of such two hundred and fifty (250) feet area. (Ord. No. 1325 §1, 4-27-98).

**Sec. 14-40-14-72**

Repealed. (Ord. No. 1260, §1, 7-22-96)

**Sec. 14-73. Penalty for violation of certain provisions of article.**

Any person, firm, corporation or association violating any of the provisions of this Chapter shall, upon conviction, be liable to pay a fine not to exceed two hundred dollars (\$200.00). Each day any violation shall continue after notice thereof shall constitute a new and separate offense and be punishable as such. (Ord No. 1154 §2, 2-22-93)

## ARTICLE III – FRANCHISES

## Sec. 14-74. Franchise Requirement.

- a. Requirement. No person shall install, construct, maintain, extend or operate facilities along, across, upon, under or within the public right-of-way or shall provide service within the corporate boundaries of the City without a franchise authorizing the same, unless applicable federal or State law prohibits city enforcement of such requirement. This requirement includes: (1) persons with facilities within the City in order to provide service outside, but not within the City; and (2) persons without their own facilities within the City that lease or otherwise use the facilities of other persons in order to provide service within the City. Provided, this requirement shall not include a reseller as defined below, or a governmental entity that has entered into an agreement pursuant to K.S.A. 12-2901 *et seq.* with the City regarding the use and occupancy of the right-of-way.
- b. Definitions. For the purpose of this Article, the following words are defined as follows:
1. **“Facilities”** means lines, pipes, wires, cables, conduit, ducts, poles, towers, cabinets, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, appurtenances, or other equipment used to provide any service.
  2. **“Reseller”** means a provider of service within the City whereby the provider purchases and resells the service of another duly franchised provider, but only where the duly franchise provider is already paying fees for the resold services under its franchise with the City. (For example, the resale of local exchange service as contemplated by K.S.A. 12-2001(n).)
  3. **“Service”** means any utility or similar service to be provided to a person by means of a delivery system that is comprised of facilities, including without limitation, gas, telecommunication, cable, broadband, Internet, Open Video Systems, steam, electric, water, telegraph, data transmission, or any other similar service.
- c. Nature of Rights Granted. Any franchise granted by the City shall be nonexclusive. No franchise shall convey title, equitable or legal, in the public right-of-way or any other public property, but shall only give the right to occupy the public right-of-way for the purposes and period stated within the franchise. No franchise shall grant the right to use facilities owned or controlled by the City or a third-party without the consent of such party, nor shall it excuse a franchisee from obtaining any appropriate access or attachment agreements before locating facilities on facilities owned or controlled by the City or a third-party.
- d. Preservation of Police Power Authority and Applicability of Regulations. Any rights granted pursuant to any franchise shall be subject to the reasonable public health, safety and welfare requirements and regulations of the City. In addition, a franchisee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies,

resolutions and ordinances adopted by the City, relating to the construction and use of facilities within the City, including without limitation, the City's Ordinance for the Use and Occupancy of the Public Right-of-Way (codified as Article IX of Chapter 24 of the Merriam Code, as may be amended), the City's Ordinance for Underground Wiring (codified as Article VII of Chapter 24 of the Merriam Code, as may be amended), and the City's Plan Requirements and Standards for Utility Structures (codified as Part 5 of Article 3 of the Merriam Zoning Regulations, as may be amended).

- e. Failure to Enforce. The failure of the City to insist upon the strict adherence to the requirements of this Article or of any franchise shall not be construed as a waiver or relinquishment for the future for the future of the rights of the City to enforce this Article or any franchise or any term or provision thereof.
- f. Federal and State Law. The requirements set forth in this Article shall be subject to the provisions of K.S.A. 12-2001 *et seq.*, as may be amended, and any other applicable federal or State law.

**Sec. 14-75. Franchise Applications, Fees and Costs.**

- a. Applications. All applications for an original franchise or for a franchise renewal shall be on forms provided by the City, shall be fully completed, and any applicable fee or cost shall be paid prior to processing by the City. Each service subject to a franchise shall require a separate application.
- b. Application Fee. A Franchise Application Fee shall be paid at the time of the application in the amount as set forth in the City's Schedule of Fees. Said fee shall not be considered or credited against the collection of applicable franchise fees.
- c. Costs. All reasonable costs incurred by the City in drafting, negotiating, adopting, and publishing a franchise shall be reimbursed by the applicant. Said costs shall not be considered or credited against applicable franchise fees.

**Sec. 14-76 – 14-80. Reserved.**

(Ord. No. 1590, § 2, 02-25-08)