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Title: Amending Article XII of Chapter 64, Code of Ordinances, entitled "Street Plate Bridging Regulations," by repealing said Article and enacting in lieu thereof a new Article XII of like number and subject matter to require the embedding of all street plate bridging.

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ORDINANCE NO. 211029

Amending Article XII of Chapter 64, Code of Ordinances, entitled "Street Plate Bridging Regulations," by repealing said Article and enacting in lieu thereof a new Article XII of like number and subject matter to require the embedding of all street plate bridging.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Article XII of Chapter 64, Code of Ordinances, entitled "Street Plate Bridging Regulations," is hereby amended by repealing said Article and enacting in lieu thereof a new Article of like number and subject matter to read as follows:

ARTICLE XII STREET PLATE BRIDGING REGULATIONS

DIVISION 1. IN GENERAL

Sec. 64-419. Title and authority.

This article shall be known as the City street plate bridging regulations and may be cited as "street plate bridging regulations" or "regulations." The Director of Public Works shall be responsible for the administration and enforcement of this article.

Sec. 64-420. Purpose of article.

The purpose of this article is to promote and protect the public interest by regulating the use of street plate bridging upon the paved driving surfaces.

This article establishes administrative, implementation, and enforcement procedures for the protection of the riding quality of City streets impacted by construction related or other activities.

Sec. 64-421. Other laws.

Neither this article nor any administrative decision made under it exempts the applicant or any other person from other requirements of this code, state and federal laws, or from procuring other required permits, or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the applicant or any person arising from the activity regulated by this article.

Sec. 64-422. Definitions.

For purposes of this article, the following terms, phrases, words and their derivations shall have the following meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word shall is mandatory and may is permissive. Words not defined shall be given their common and ordinary meaning.

(a) *Adopted standards.* Any design or construction specification adopted in writing by the Director of Public Works.

(b) *Applicant.* The person who places street plates or the persons authorized agent who submits or is required to submit an application to the Director of Public Works for a street plate permit.

(c) *Central business district.* The area encompassed by the interstate highway system commonly known as the downtown loop.

(d) *Code.* The Code of Ordinances for the City.

(e) *Director.* The Director of Public Works of the City or the Director's authorized representative.

(f) *Emergency.* A condition, as defined by the Director, that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair or replacement in order to restore service to a customer.

(g) *Excavate.* The removal of materials.

(h) *Fill.* The deposit or stockpiling of materials.

(i) *Grading.* Any excavating or filling of earth materials or any combination thereof.

(j) *Inspection.* The periodic field review of street plate bridging for the purposes of determining compliance.

(k) *Other streets.* Those roadways that are not shown on the major street plan.

(l) *Nuisance.* Any act or situation as defined in section 48-3 of the Code.

(m) *Person.* Any individual, firm, partnership, corporation, association, organization or legal entity of any kind including governmental entities.

(n) *Streets and roadways.* An area of land designated and reserved for public travel such as streets,

medians, parkways, and their associated curbs and gutters.

- (o) *Work.* Any activity that involves construction or preparation for construction of an improvement.

DIVISION 2. ADMINISTRATION

Sec. 64-423. Regulated activities.

- (a) Except as provided in section 64-424, no person shall:
 - (1) Place street plate bridging without first applying for and obtaining a street plate bridging permit from the Director;
 - (2) Allow street plate bridging to remain in place in excess of 30 calendar days;
 - (3) Allow street plate bridging to be placed without embedding the street plate bridging the same date it is first placed on the street or roadway.
- (b) Street plates shall be embedded as follows:
 - (1) Street plate bridging shall be embedded as of the date it is first placed on the street or roadway and shall remain embedded until such time as the work is complete and the street plate bridging has been removed. The requirement to embed shall not apply to street plate bridging placed on concrete streets and roadways if the Director determines that an emergency exists sufficient to justify its placement.
 - (2) Notwithstanding any of the foregoing provisions of this subsection, the requirement to embed street plate bridging until such time as the work is complete and the street plate bridging is removed shall not be construed as modifying or waiving the 30 calendar day period that street plate bridging may remain in place.
- (c) The street plate shall be conspicuously marked with the owner's name and telephone number.
- (d) No permit issued under this article shall be assignable, and no person shall allow his name to be used to obtain a permit for any other person.

Sec. 64-424. Exceptions.

(a) If an emergency exists, a person may place street plate bridging within any street or roadway under the control of City without first applying for and obtaining a permit. A permit is still required, however, and shall be applied for the next regular business day after the street plate bridging is placed. The street plate bridging is required to be embedded on the same day in which it is placed on the street or roadway in cases of emergencies.

(b) If an emergency exists, the Director may permit street plate bridging to remain in place in excess of the time limitations established by this article or waive the prohibition on the placement of street plate bridging on concrete streets and roadways during the winter months.

(c) No permit shall be required if the street or roadway where the street plate bridging will be placed is closed to local and through traffic.

Sec. 64-425. Street plate bridging standards.

The Director shall adopt and maintain street plate bridging performance standards to assist in the administration of the program. The standards shall be based upon, but not limited to, the following principles:

- (1) Minimize the time street plate bridging is placed upon driving surfaces.
- (2) Maintain and preserve the riding quality of the street surfaces.
- (3) Maintain safety for pedestrians.
- (4) Increase the longevity of street surfaces.

Sec. 64-426. Permit fees.

(a) *Permit application fee; additional daily permit fee.* The permit application fee shall be \$29.00. There shall be no additional daily permit fee for the first 21 calendar days from and including the date on which the permit was first issued. Commencing on the twenty-second calendar day and each day thereafter a daily permit fee of \$0.45 per square foot of street plate bridging shall be imposed.

(b) *Fees if street plate bridging is placed prior to obtaining permit.* The permit application fee shall be \$117.00 and the daily permit fee shall be doubled if street plate bridging is placed prior to obtaining a permit, except in cases where such placement was required by an emergency.

(c) *Waiver of fees.* At the sole discretion of the Director, all or part of the fee may be waived if unique or unusual circumstances, as determined by the Director, so warrant.

(d) *Adjustment of fees.* The Director shall have the authority to adjust the fees listed in this section to reflect the change in the consumer price index (all items/all urban consumers/ Midwest urban) published by the United States Department of Labor, Bureau of Labor Statistics. The adjustments, if any, shall be made annually by the Director in conjunction with the adoption of the annual budget of the City by filing a notice with the City clerk.

(e) *Use of fees.* All fees collected pursuant to this section shall be allocated to the Public Works Department to be used for traffic control purposes.

(f) *Adjustment of fees.* The City Manager shall have the authority to adjust the fees listed in this section to reflect the change in the consumer price index (all items / all urban consumers/ Midwest urban) published by the United States Department of Labor, Bureau of Labor Statistics. The adjustments, if any, shall be made annually by the Director in conjunction with the adoption of the annual budget of the City by filing a notice with the City clerk.

(g) *Fee if street plate bridging is not embedded.* Commencing on the first calendar day the street plate bridge is not embedded in accordance with section 64-423 and each day thereafter a daily permit fee of \$0.45 per square foot of street plate bridging shall be imposed.

Sec. 64-427. Application for permit.

Application and review process. Any person requesting a street plate bridging permit must submit an application to the Director. After review of an application, the Director shall notify the applicant of such further action and reviews as necessary. The Director reserves the right to deny any permit.

Sec. 64-428. Coordination with other permits.

The Director may simultaneously issue a street plate bridging permit, excavation permit, and traffic control permit.

Sec. 64-429. Indemnity agreement.

(a) Unless otherwise addressed in a current franchise agreement with the City, as a condition for the issuance of each permit, the applicant shall furnish to the Director an indemnity agreement in the form approved by the Director binding the applicant to defend, indemnify, and hold harmless the City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the excavation, including claims arising subsequent to completion of the operation and return of the excavation site to normal use, caused in whole or in part by the applicant, its employees, agents, or subcontractors, or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of City, its agencies, officials, officers, or employees. An applicant's obligations under this section with respect to indemnification for acts or omissions of City, its agencies, officials, officers, or employees shall not apply to any claims arising solely out of the City's negligence.

(b) Duration. Unless otherwise addressed by a current franchise agreement with the City, the obligation for indemnification provided for in this section shall remain in effect for a period of three years from the date of completion of the work covered by the permit.

Sec. 64-430. Insurance.

Unless otherwise addressed by a current franchise agreement with the City:

(a) As a condition for the issuance of each permit, the applicant shall procure and maintain insurance coverage not less than the types and amounts specified in this section.

(1) Commercial general liability insurance with limits of \$1,000,000.00 per occurrence.

(2) The policy shall be written or endorsed to include the following provisions:

- a. Severability of interests coverage apply to additional insureds.
- b. Contractual liability.
- c. No contractual liability limitation endorsement.
- d. Additional insured endorsement, ISO form CG20 10, current edition, or its equivalent.

(b) Self-insurance is unacceptable to City unless the excess insurance policy or an endorsement thereto contains drop down provision or cut through endorsement for the retention in the event of insolvency of the applicant, or in the case of utility franchised by the City, if an excess insurance policy covering claims against the applicant arising out of excavations on property, right-of-way or easements controlled by the City is maintained by the applicant pursuant to a franchise agreement.

(c) The insurance policy may not be canceled until after 30 days written notice of cancellation to City, ten days in the event of nonpayment of premium. The insurance shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional

insureds.

(d) The applicant shall provide to the City a certificate of insurance showing all required endorsements and additional insureds. The certificate shall be in a form acceptable to the Director and accompanied by an additional insured endorsement.

(e) The insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the state to do business in the state.

(f) Regardless of any approval by the City, or issuance of a permit, it is the responsibility of the applicant to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any obligation or responsibility. In the event of applicant's failure to maintain the required insurance in effect, the City may order applicant to immediately stop work until the applicant complies with the insurance requirements set forth in this article.

DIVISION 3. IMPLEMENTATION

Sec. 64-431. Installation of street plates.

The applicant shall apply for a permit before any street plates are installed. The applicant shall ensure that all street plate bridging is installed and embedded in accordance with the City's adopted standards. The closeout of the permit shall constitute notification to the Director that the work is completed and the street plates have been removed.

Sec. 64-432. Maintenance of street plates.

The applicant shall perform regular inspections of street plates and at all times maintain street plate bridging in good order and in compliance with the City's adopted standards for the duration of the permit.

Sec. 64-433. Removal of street plates.

The applicant shall notify the Director after any street plate bridging is removed or made ineffective. Removal of steel plate bridging must be performed in accordance with the City's adopted standards. The closeout of the permit shall constitute notification to the Director that the work is completed and the street plates have been removed.

DIVISION 4. ENFORCEMENT

Sec. 64-434. Enforcement policy.

The Director shall handle enforcement and attempt to resolve issues of noncompliance through routine methods that include inspecting the site, communicating, negotiating, and issuing written warnings to the applicant. If these methods fail, the Director may, upon three business days' notice for non-emergencies and one hour notice if deemed an emergency by the Director, revoke the permit, remove the street plate bridging, fill any associated excavations, restore the driving surface, take possession of street plates, and assess all costs to the applicant, including but not limited to outstanding permit fees, the cost of hiring a private contractor, if necessary, and any costs associated with the collection of outstanding fees.

In cases where street plate bridging has been in place in excess of 30 calendar days, or where the applicant violates any other provision of this article, including but not limited to the requirements for embedding, or otherwise fails in any regard to satisfy the adopted standards as determined by the Director, the Director may determine that the continued placement of the street plate is a nuisance. In such a case, the Director shall give

the applicant written notice that the continued placement of the street plate is a nuisance and shall state that City will remove the plate if the nuisance is not remedied within three business days. The City may assess all costs to the applicant as provided for in this section.

Sec. 64-435. Debarment.

(a) *Policy.* No street plate permit shall be issued to any applicant which is itself debarred from obtaining street plate permits as hereinafter set forth, or which is managed, controlled, or more than 50 percent owned by a person or entity so debarred. An applicant which is itself debarred, or which is managed, controlled or more than 50 percent owned by a person or entity that is debarred shall not act as a subcontractor on any work performed pursuant to the issuance of a street plate permit issued by the City.

(b) *Grounds for debarment; duration of debarment.* In the event that any applicant on any work performed pursuant to the issuance of a street plate permit issued by the City is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the street plate permit in any way, including but not limited to those listed below, then such applicant and its chief operating officer, and any owner or part owner who participated in the management of the company at the time of the violation, shall be debarred from participating in any work requiring the issuance of a street plate permit for a period of two years for the first offense, five years for the second offense and ten years for any subsequent offense.

- (1) Incorporating materials into the work which are not in accordance with the specifications.
- (2) Failing to complete the permitted work.
- (3) Performing work without having obtained the required permits.
- (4) Concealing work from the City's inspectors.
- (5) Failing to repair property which was damaged in the course of doing the permitted work.
- (6) Failing to pay outstanding permit fees.
- (7) Failing to comply with the provisions set out in this street plate bridging article.
- (8) Permitting a subcontractor to do any of the things listed in this subsection or failing to take reasonable measures to prevent a subcontractor from doing the things listed herein.

(c) *Procedure.* Action to debar a contractor may be initiated by the Director and shall proceed as follows:

- (1) *Initiation of proceeding.* The proceeding may be initiated by the Director who shall issue a written notice of the proposed debarment to the applicant and to the City Manager. The notice shall include a statement of the reasons for the proposed debarment, the date of mailing, and the date, time and place of a hearing on the matter. If the applicant cannot be located for purposes of delivery of the notice, the proceeding shall be held in abeyance until notice can be given.
- (2) *Notice.* Any notice required by the proceeding and any other notice to the applicant may be sent postage prepaid by certified U.S. mail to the applicant at its last known address or at its registered office, if it is a corporation, or by delivering a copy of the notice to the applicant personally or to an officer, partner, or managing or general agent or to any other agent authorized by appointment or required by law to receive service of process.
- (3) *Hearing panel.* The hearing panel shall consist of three persons appointed by the City

Manager, one of whom shall be designated as chairperson. The panel shall not include the department Director or any member of the department that initiated the proceeding. A person that has served on a debarment hearing panel against a contractor may not serve on a subsequent debarment hearing panel involving the same contractor.

- (4) *Conduct of hearing.* Unless a delay is requested by the applicant, the hearing shall be held no more than 30 days after notice is received by the applicant. The applicant shall have full right to have counsel, to produce witnesses and to cross examine all witnesses who may appear against it. All proceedings in such hearings shall be taken down stenographically, or recorded mechanically or electronically, or by a combination thereof, and shall be transcribed whenever required by law. Subpoenas shall be issued by the hearing panel for any witness whose presence is desired at any hearing or proceeding before the hearing panel. Such subpoenas shall be served and return thereon shall be made in the same manner as is provided by law in civil suits in the circuit court of this state. Witnesses may also appear voluntarily at such hearings and testify. Before any witness shall testify in any such hearing or proceeding, he shall swear or affirm to tell the truth.
- (5) *Decision.* Decisions shall be concurred in by a majority of the hearing panel. Within 60 days after the hearing, the panel shall issue its decision in writing stating whether the applicant is debarred from obtaining street plate permits and, if so, for what period of time.
- (6) *Notice of decision.* The applicant shall be given prompt notice of the decision of the hearing panel, and a copy of such decision shall be promptly mailed or otherwise furnished to the applicant.
- (7) *Finality of decision.* The decision of the hearing panel shall be final and conclusive unless the applicant, within 30 days after issuance of the decision, commences a timely action for review in a court of competent jurisdiction in accordance with applicable law.

Sec. 64-436. Restoration deposit.

If street plate bridging is placed in conjunction with work for which an excavation permit is required pursuant to article IV of this chapter, the restoration deposit furnished by the applicant as a condition for obtaining the excavation permit shall further guarantee the applicants compliance with the provisions of article XII, street plate bridging regulations. No additional restoration deposit shall be required for the issuance of a street plate permit except as provided for herein.

Approved as to form and legality:

Nicole Rowlette
Assistant City Attorney