

# GUIDE FOR ACCOMMODATING UTILITIES WITHIN RIGHT-OF-WAY FOR COUNTIES & SMALL CITIES IN KANSAS



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# Introduction

In Kansas the cities and counties have the responsibility to maintain the public streets and roads within their boundaries. The rights-of-way to construct and maintain these public roads have been acquired by the various agencies over the years through various means such as road petitions, purchase, and dedication through platting. In order to provide modern conveniences to our citizens it is necessary that public utilities be allowed to use the same right-of-way acquired by the cities and counties. State law authorizes public utilities to use road right-of-way, provided they do not obstruct or hinder the usual travel, adversely affect public safety, or obstruct the legal use by other utilities. State law also provides that cities and counties may establish rules and regulations governing the use of public right-of-way as long as the rules are competitively neutral and are not unreasonable or discriminatory.

As our society becomes more complex, an increasing number of cables, pipelines, and overhead facilities have to be accommodated in a right-of-way that is not expanding. Because of this it is important that the local governmental agencies take an active role in ensuring that utilities are installed in a way that minimizes safety issues and protects public facilities and other utilities from damage, and also insures that any utility construction does not block the future installation of other utilities.

This guide examines current issues and practices in Kansas and provides general recommendations that cities and counties can use to manage their right-of-way in the best interest of the traveling public, public agencies and the utilities. It was developed primarily for counties and smaller cities that do not have regulations in place, or that need to update their regulations and procedures. The guide attempts to concentrate on major issues and minimize additional paperwork for both the utilities and the local agencies. Conditions differ in each city and county, some modification of the recommendations may be needed to fit local conditions. Review by the city or county attorney working with the public works staff and local utilities is essential to develop the optimum balance between regulations and reasonability.

# Glossary

This guide has attempted to minimize the use of acronyms and legal terms. There are a few acronyms and terms that may appear and are defined here:

**MUTCD - Manual on Uniform Traffic Control Devices for Streets and Highways** - the manual published by the Federal Highway Administration. The 2003 Edition of the MUTCD has been adopted by the Secretary of Transportation for use on public roads and streets in Kansas. *Part 6 – Temporary Traffic Control* of the MUTCD applies to all construction and maintenance including utility work zones near the road. Part 6 also includes requirements for signing sidewalk construction.

**Right-of-way** – sometimes abbreviated as **R/W** or **ROW**. Right-of-way is the land dedicated to the state, county, or city for travel by the general public. In this guide, *right-of-way* is the land maintained as streets, roads or alleys by the city or county and includes the entire right-of-way width, not just that portion occupied by the street and sidewalk. Easements for a specific purpose, such as a streamway trail, are not public right-of-way.

**Public Utility** – A public utility is generally a commercial company or agency that provides and sells electricity, water, gas, telephone, cable TV, sewer or natural gas to homes and businesses. KSA 66-104 has an extensive definition of utilities that are regulated by the Kansas Corporation Commission. Certain large pipeline companies are by nature and definition public utilities although they do not serve local customers like a traditional public utility company.

**Private Utility** – A private utility company as used in the guide refers to an individual or company that owns a line that is for use of the company rather than to serve customers. Typical examples of private utility lines are oil and gas field collection lines, water service lines on the customer side of the meter, farm irrigation lines, and a water line owned by a farmer that connects the water well to the house.

**Kansas One-Call** – Sometimes called **Dig Safe** or just **One-Call**. “*Kansas One-Call*” is the underground utility notification center for the state of Kansas. Through this center, a person can notify operators of underground facilities of proposed excavations and request that the underground facilities be marked. While most public utilities are members of the one-call system, some city water and sewer departments may not be members of the one-call system. Kansas law requires excavators to call for utility locates two business days before they dig.



# Section 1

## General Items

### Reasons for Managing Utilities in Road Right-of-Way

The primary purpose of road right-of-way is for public travel. The city or county that owns the right-of-way has some responsibility to see that utilities are installed in a way that minimizes traffic safety issues and does not unnecessarily hinder travel on the right-of-way. In addition these local governments own and maintain the street improvements such as pavement, curb, drainage structures and sidewalks. It is important that damage to these facilities is minimized and, when they are damaged, that they are repaired properly to obtain the maximum service life.

Many utilities need to use limited right-of-way and it is important that utilities are installed so they do not obstruct the use of the right-of-way by other utility companies. In urban and suburban areas, the adjacent land owners maintain the right-of-way as part of their front yard. Since utility work sometimes damages lawns and landscaping, the land owners look to the local government agency for help to insure the utility company properly restores the right-of-way. Local agencies are encouraged to develop regulations to manage their right-of-way to minimize conflicts.

### Authority to Place Utilities in Right-of-Way

In Kansas, the authority to place public utilities in road right-of-way has been established by a series of Kansas Supreme Court decisions and were best summarized by *Mall v. C. & W. Rural Elec. Coop. Association Inc.*, 213 P.2d 993,996 (Kan. 1950). These court cases generally allow the use of highway right-of-way by public utilities, provided that it does not “seriously impede or endanger public travel or unnecessarily interfere with the reasonable use of the highway by other members of the public and there is no invasions of the rights of the owners of abutting lands.” There are specific statutory provisions for electric cooperatives (KSA 17-4601 et seq.), sewerage corporations (KSA 17-623), telegraph and telecommunications companies (KSA 17-1901 et seq.). State statutes allow cities to have franchise agreements with utility companies which authorize these utilities to occupy the city’s right-of-way for a fee, and provide service to city customers (KSA 12-2001 et seq.). State statutes do not allow counties to have franchise agreements. In 2002 there was legislative activity in this area, and KSA 17-1902 was revised to address issues related to competition between telecommunication companies and the difficulty sometimes encountered by new providers. This law specifically addresses telecommunication lines in cities, but is generally used as a guide by cities and counties on relationships and procedures with other types of utilities.

### Fees

Kansas cities and counties are specifically allowed by KSA 17-1902 to collect certain fees to offset costs but the statute prohibits any other fees relating to the installation. These allowed fees are:

- Permit fee to cover processing
- Excavation fee for pavement cuts to cover costs related to reduced life of the street
- Inspection fee
- Repair and restoration costs related to restoring the public right-of-way

Fees are allowed to offset costs of the local government, and are not for the purpose of revenue enhancement. A performance bond is also allowed in the fee section of the statute.

The utility companies’ concerns about fees focus on cost and administrative expense. Large companies such as public utility companies have financial controls and procedures that make it difficult and expensive to issue small checks without an invoice. If fees are instituted, utility companies generally prefer an annual fee based on previous year’s activity rather than a fee for each permit. Fees for individual permits are not as much of an issue when private contractors are performing the work, as the utility company usually requires the contractor to obtain the permit and pay the permit fee.

### Timeliness of Issuing Utility Permits

Utility companies have expressed concern about the length of time it takes to have a utility permit approved by a city or county. For a variety of reasons urgent matters and emergencies arise making it

important to the utility companies to have the utility permit issued quickly. Most concerns associated with timeliness involve approval of the permit by the governing political body, and the lead time necessary to have items put on the agenda. Some of the governing bodies may only meet monthly or bi-monthly. For this reason, local governments should consider authorizing a public official and an alternate to execute the permits on behalf of the city or county. This will avoid delays waiting for a meeting of the governing body.

### **Communication with Utility Companies**

A common concern of local governments is lack of contact information for the utility company if there is a problem or question. This is more of a concern when contracting with companies that utilize contractors rather than company crews. The contractor may be the main contact point, and it may not be in the contractor's best interest to relay concerns to the utility company. Additionally, job turnover both at the local government and the utility company may hinder communications unless efforts are made by both sides to keep communications open. To enhance communications, local governments should consider having a short meeting yearly with each utility company. The meeting should include the local official that approves the utility permits, the street maintenance foreman, the utility company engineer who designs the work, the utility company maintenance foreman and the utility company's contractor, if any. The purpose of the meeting is to cover these basic items:

- Contact information
- Permit procedures
- Emergency work
- Future city/county projects that might affect the utility
- Future major construction by the utility company
- Issues from previous years and how to avoid them

### **Easements and Right-of-Way**

It is important to recognize the difference between utility easements and right-of-way. KSA 17-1902 gives the city authority over the right-of-way. The definition of right-of-way in this statute does not include "easements obtained by utilities or private easements in platted subdivisions or tracts." The local agency has little or no control over the utility company in an easement that the utility has purchased.

In cities and residential areas in the counties, most utility easements are dedicated when a subdivision plat is filed for a new development. The counties and cities usually think of these utility easements as public utility easements, of which they have jurisdiction. However, the jurisdiction over the easement may be dependent on the exact wording on the subdivision plat. Dedication wording on subdivision plats for utility easements vary by jurisdiction, and sometimes by the surveyor that drafts the plat.

Typical wording is of two generic types:

1. Utility easements are for the installation and maintenance of public utilities.
2. Utility easements are for the installation and maintenance of public utilities under jurisdiction of the city.

The first type of dedication generally grants the utility easement to public utility companies, while the second type of wording gives the city more authority within the utility easements. If the local agency is considering applying permit procedures and regulations to platted utility easements, the matter of jurisdiction should be considered by the city or county attorney. Some large cities in Kansas (Overland Park & Leawood) have regulated utilities in platted utility easements based on police powers related to public health and safety rather than specific dedication wording on subdivision plats.



Figure 1. Power box set close to street due to lack of adequate easement behind the sidewalk.

### Utility Easements in New Subdivisions

Zoning and subdivision regulations do not always provide adequate room for installation of utilities. Many of the current zoning regulations require only 50 feet of right-of-way for new residential streets. The 50-foot wide right-of-way does not provide enough room for all the utilities. The right-of-way is typically occupied by a 28-foot street and a 4-foot sidewalk, plus street lights and storm sewer, so there is minimal room remaining to install all the utilities. Also, the sidewalk is usually placed just inside the right-of-way line, and if utilities are to be placed away from the road for safety, they usually need to be behind the sidewalk. For these reasons a 10-foot utility easement is needed on each side of any platted street right-of-way.

The Model Construction Requirements provided in Appendix 1 state that the utilities should be installed in the easement when available. (See Appendix 1-5).<sup>1</sup>

### Insurance

Local agency regulations usually require insurance certificates from both the utility companies and their contractors. This is not a bad practice, but may not be essential with public utilities as all public utilities do have insurance, and the risk managers for those companies require their contractors to carry insurance. The model permits and construction requirements do require insurance, but only require a certificate of insurance from a contractor installing a private utility across a road. The local agency's attorney may want to review this matter, and the need for a certificate of insurance in all cases.

### Liability Clause

Some local agencies have a blanket statement in their permit that states "*the utility company assumes liability for any and all claims due to or arising from acts of the utility or its contractors.*" This liability statement exceeds the authority granted in KSA 17-1902. Many claims can arise during a project. The claims may or may not be valid, and may or may not be the fault of the utility or its contractor. An example incident would be a drunk driver who crashes through a barricade that was placed in accordance with the MUTCD. The model permit (provided in Appendix 1) does not have the above noted liability clause, but does have a clause that holds the local agency harmless for the acts of the utility and its contractors. (See Appendix 1-9 through 1-11).<sup>2</sup>

### Bonds, Deposits or Withholding Payment

Local governments that require performance bonds have been reluctant to involve a bonding company to obtain compliance with the permit and related restoration. This may be due to lack of familiarity with the process, or reluctance to have higher level officials involved in a lengthy process. It appears that most local governments would like to use a deposit as a type of performance bond, and return the deposit when the project is completed properly. An alternative might be that the utility companies agree to withhold final payment to the contractor until they have been notified by the local government that the job has been completed and accepted.

### Private Utilities

On occasion, private utility companies request permission to install their facilities on right-of-way. Examples of private utility lines are crude oil lines between an oil well and tank batteries; a water service line that connects to a water main that does not run in front of the property; or a water line from a water well to a house. The major concerns related to private lines include:

- The company or individual may not be a member of One-Call system so the line may not be flagged when there is construction work in the area.

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<sup>1</sup> The reference to "Model Construction Requirements" throughout this document refers to the "Construction Requirements and Procedures for Installation of Utilities in the Public Right-of-Way of Sample County, Kansas" provided in Appendix 1, pages A1-A7.

<sup>2</sup>The reference to "model permit" throughout this document refers to the "Annual Utility Permit Application," the "Utility Permit Application," and the "Road Crossing Permit Application-Private Utility" provided in Appendix 1, pages A8-A12.

- If future road work requires that the line needs to be moved, the owner may not have financial capabilities to move the line.
- The facility may not be maintained properly.
- The owner may not have the financial capabilities to repair damage to the road.
- Ownership of the line may change and the new owner may not realize their responsibility for the line in the right-of-way.

State law does not appear to authorize private lines on public right-of-way. Also, due to those issues listed above, it is appropriate that private lines be limited to only road crossings. The Model Construction Requirements in Appendix 1 state that if the owner is not a member of the One-Call system then warning signs/pipeline markers shall be placed on both sides of the right-of-way. (See Appendix 1-4).

## Section 2

### Construction Items

#### Clear Zones and Horizontal Placement of Utilities in the Right-of-way

A **clear zone** is defined by the American Association of State Highway and Transportation Officials' (AASHTO) *Roadside Design Guide* as the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The clear zone aids designers of road or street projects so that rigid items within the clear zone, such as bridge rails, are required to have breakaway features or be protected by guardrail. The AASHTO *A Policy on Geometric Design of Highways and Streets* (Green Book) enumerates a clear zone value for two functional classes of highways. For local roads and streets, a minimum clear zone of 7 to 10 feet is considered desirable on sections without curb. A 10-foot minimum clear zone is recommended on collectors without curbs. The general discussion on Cross-Section Elements also indicates that a clear zone of 10 feet should be provided for low-speed rural collectors and rural local roads.

Errant vehicles routinely travel outside the clear zone, so it is always a good policy to locate rigid objects as far away from the road as possible. The Federal Highway Administration (FHWA) policy is that utility facilities should be located as close to the right-of-way line as feasible. The Green Book, AASHTO *Highway Safety Design and Operations Guide, 1997* (Yellow Book) and the AASHTO *A Guide for Accommodating Utilities within Highway Right-of-way*, state that utilities should be located as close to the right-of-way line as feasible. The Yellow Book, recognizing that crashes are over-represented on urban arterials and collectors, says this means as far as practical behind the face of outer curbs; and where feasible, behind the sidewalks. Local agencies should insist that utilities be placed as close as possible to the right-of-way line to enhance safety and to reduce conflicts with maintenance operations. Fire hydrants are a special feature that have a place in the clear zone and are discussed in a subsequent section.

#### Utility Corridors

Some local agencies have identified utility corridors within the right-of-way. These corridors are usually a certain width next to the right-of-way line. These corridors usually work well in rural areas that have fairly wide right-of-way. In city streets and township roads the right-of-way is usually narrow and the utility corridor is effectively from the edge of the road to the right-of-way line. Local agencies should consider establishing utility corridors where practical.



Figure 2. Water meter in clear zone improperly set too high.

An item requiring special consideration is the power pole line. Power pole lines need to be straight (requiring guys and anchors), and as close to the right-of-way line as practical. One way to accomplish this is to limit the outside 3 feet to power poles and above-ground utilities. Buried longitudinal lines should be placed at least three feet from the right-of-way line, where power pole lines exist or are expected in the future.

#### Directional Boring and Jacking

Some agencies have reported humps in crossings of paved roads due to directional boring or jacking. These humps happen when the boring or jacking occurs at a relatively shallow depth resulting in the subgrade and pavement being pushed up by the force of the jacking. Jacking service lines just under asphalt pavement can cause the pavement to both hump and crack. To minimize pavement humping, the Model Construction Requirements in this guide state that the depth for directional boring or jacking should be 1 foot below the bottom of the pavement for each inch in diameter of the line. (See Appendix 1-5). For example a 4-inch line jacked under the road would have to be 4 feet below the bottom of the pavement. Humping is not an issue when boring with an auger as the excess material is augured out of the hole.

## **Service Lines**

Service lines or “drops” are the lines between the main line along the right-of-way to the house, business or other building needing the service. The service line is typically owned by the utility company to the meter for gas, water, and electricity. Cable and telephone service lines are owned by the utility company to a transfer box on or inside the building. There are several issues of importance related to service line installation: 1) Line depth, 2) Sidewalk settlement, and 3) Inexperienced contractors.

Service Line Depth: Cable and telephone service lines are normally installed by a walk-behind plow that buries the line only a few inches deep. Local agencies are concerned about potential damage to these lines when they do any type of work in the area. It is unlikely the utility companies will be interested in installing the service lines deeper to accommodate this concern. There are certain advantages to a shallow service line, as they do not cut tree roots, they do not interfere with other utility lines and the lightweight equipment does little damage to the yards and right-of-way. The model permit in this guide includes an article that holds the local agency harmless for damage to lines in the right-of-way installed less than 24-inches deep (See Appendix 1-8, paragraph 3). This may give the local agencies some relief from liability issues.

Sidewalk Settlement: Sidewalk settlement over the water line trench is a common problem. New service lines for water are normally installed by the plumber contracted by the home owner to plumb the new house. The local water company usually makes the line tap and furnishes the meter and related hardware. The plumber usually cuts his trench with a backhoe prior to the sidewalk being constructed. The plumber may bore the road or street, and usually cuts his backhoe trench to the edge of the pavement or shoulder. As a general rule plumbers do not have the equipment to properly compact the trench. For this reason, the Model Construction Requirements state that the service lines shall be bored from the right-of-way line on the side of the street that the sidewalk will be located, or flowable fill be required as backfill. (See Appendix 1-5, Boring).

Inexperienced Contractors: Most local agencies and rural water districts require that the land owner hire a contractor to install the service line. These contractors are usually plumbers or small contractors that may not have adequate signs, and are inexperienced with road crossings. These contractors may not have insurance, and may be difficult to locate if a problem develops later, such as settlement or sod restoration. The model road crossing permit for a private utility requires a deposit and certificate of insurance for each crossing unless bored completely across the right-of-way width. (See Appendix 1-10, Contractor Section).

Since few other issues were reported on service lines, the model annual permit includes service lines installed by utility company crews or contractors working directly for the utility company unless a road or sidewalk cut is required. (See Appendix 1-10, Utility Section).

## **Same Utility on Both Sides of the Road or Street**

There is limited room within the right-of-way for all the utility companies, and no utility should occupy more room than necessary. On occasion a utility company will need to upgrade their line to increase capacity or replace an obsolete line. In this case the old line should be abandoned when the new line is placed into service. Some agencies have required the old line to be removed. This is an expensive process that should be discussed with the utility on a case-by-case basis. To allow room for all utilities in the right-of-way the Model Construction Requirements do not allow the same utility to have a line on both sides of the road. (See Appendix 1-5, General).

## **Bridge and Culvert Attachments**

Attachments to bridges and culverts are sometimes convenient so the lines do not have to be installed through creek channels. Few utilities want to attach their line to a bridge since it exposes the facility to weather, accidents, and vandalism. However, bridge attachments are sometimes necessary where installation through the creek channel is expensive and difficult, such as bridges over lakes, reservoirs or large rivers. Small telecommunication lines installed on bridges and culverts generally have not been a problem for the local agencies. The Model Construction Requirements do not require a special bridge attachment permit for cable TV and telecommunications with casing less than 2 inch diameter located on the outside of the handrail of concrete and steel bridges. All other attachments will require a special permit with plans prepared by a professional engineer. (See Appendix 1-5, Bridge Attachments).



### Boring and Casing

Local agencies generally prefer lines be bored under roads rather than installed by trenching. If a line can be bored the road can remain open to traffic, and there are few issues related to pavement patches and long term settlement. The Model Construction Requirements do specify boring for road crossings, but do not require casing for directional boring of telecommunication lines and service lines for water, gas and electric. (See Appendix 1-5, Boring). Boring becomes difficult in urban and suburban areas where bore pits are in conflict with existing utilities. If rock ledges are encountered, conventional boring equipment is not adequate. The Model Construction Requirements and annual permit state that a separate permit is required for each road and sidewalk cut, while boring is just a part of the standard utility permit for the overall project. (See Appendix 1-4, Individual Permit Required; and Appendix 1-10, Utility Section).



Figure 3. Directional boring damage to plastic culvert.

### Casings in New Subdivisions

During street construction in new subdivisions, the developer should be required to coordinate placement of conduits for street crossings of all underground utilities that will not be directional-bored. Backfill requirements should be the same as shown on the road crossing detail, but the pavement will be placed when the street is constructed.

### Damage to Culverts

There is a widespread concern about utility installations damaging culverts. Damage has been reported to entrance culverts, crossroad culverts as well as storm sewers, and usually involves metal and plastic pipe. Typical damage to entrance culverts is having the ends crushed by contractors' equipment as they trench parallel to the road. Crossroad culverts can also have exposed ends damaged by construction equipment. A more serious problem that may not show up for many years is when a line is plowed through a culvert or punctured by directional boring. Construction crews may not realize when they hit a buried metal or plastic pipe when plowing or boring. Damage may not show up until years later when debris clogs the pipe or the fill over the pipe starts to collapse. At final inspection, special attention should be directed toward possible culvert damage, especially where the location of the culverts are not apparent, such as storm sewers and culverts that are full of silt.

### Road Cut Issues

Road cuts close the road and increase travel time and expense for the residents and emergency services. Road cut repairs, if not done properly, will settle and cause further repair expenses in a few years when the responsible contractor may no longer be available to correct the substandard work. The road repair, even if done properly, detracts from the appearance of the road until the road is resurfaced. Sidewalk cuts do not affect road traffic but do affect pedestrian traffic. Due to the serious nature of road and sidewalk cuts, the Model Construction Requirements state that a utility permit and deposit will be required for each road and sidewalk cut. (See Appendix 1-4, Individual Permit Required; and Appendix 1-10, Utility Section). Proper backfill of the trench is so important to the long-term stability of the road cut that the deposit may be forfeited if the contractor does not arrange for inspection by the local government while performing backfill.

The Model Construction Requirements include a road repair detail. (See Appendix 1-7). The type of backfill aggregate will need to be specified based on the aggregate availability in the area. Many agencies are now requiring flowable fill for backfill under paved roads and sidewalks, but flowable fill is not available in all areas of Kansas. Flowable fill should be considered under pavement or sidewalk where the trench width exceeds six (6) inches.

The backfill issues are not as critical on a gravel road because normal maintenance will smooth out minor settlement. The model construction practices do not require a separate permit for a cut on a gravel road if the line can be plowed across the road and the road completely closed to traffic for less than 15 minutes

with the remainder of the construction period traffic carried through construction with flaggers and one lane open to traffic. (See Appendix 1-4).

### **Fire Hydrants**

There has been some confusion on the requirements for the location of fire hydrants related to the roadway. There is no national standard that specifies how close the fire hydrant should be from the road. The National Fire Protection Association states that fire hydrants should be located as required by the local fire department. It appears that many local fire departments are having the fire hydrants set 3 to 5 feet from the back of the curb by tradition. This location close to the curb may make it easier for the fire crews to locate the hydrant at night, and make it less likely that obstructions such as shrubs will be placed between the hydrant and the street.

For traffic safety reasons fire hydrants should be set as close to the right-of-way line as possible just like any other above ground facility. In residential areas, the location might not be as critical due to slower traffic, cars parked along the road as well as other obstacles like trees, mailboxes & light poles near the curb. However, on higher speed streets efforts should be made to have fire hydrants installed farther away from the curb. A discussion by your local agency with local fire officials about traffic safety concerns on non-residential roads and streets may lead to flexibility in the location of fire hydrants.

### **Emergencies**

Emergencies can occur due to natural causes such as flooding, ice storms, and wind. Emergencies can also be man-made such as vehicle collisions or a line cut by a backhoe. The model annual permit requires prompt notification of the emergency, but only requires a separate utility permit (within two business days) if the incident involves a road closure, or pavement or sidewalk repair. (See Appendix 1-4, Individual Permit Required).

### **Contractor Issues-Failure to Make Notifications**

Contractors working for utility companies do not always notify the government when starting work, and may fail to notify the government when the work is completed. Failure to notify makes it difficult for the government agency to inspect the work while in progress. Failure to notify that the work is completed results in being unable to perform a final inspection prior to the contractor moving equipment out of the area. The model utility permit requires a deposit, which is not returned until the work is completed, creating monetary incentive to contractors to promptly complete all restoration. (See Appendix 1-9).

### **Contractor Issues-Failure to Restore**

The local governments also may have difficulties with restoration of the right-of-way by utility contractors. Difficulties may include failure to notify that the job is complete, or inability to locate the contractor after equipment is moved off the job site. Usually the restoration is not so extensive that it justifies legal action; however, the lack of restoration has caused some ill will between the governments and the public utilities that could and should be avoided. The model utility permit requires a deposit, which is not returned until the work is completed, creating monetary incentive to contractors to promptly complete all restoration. (See Appendix 1-9).



Figure 4. Fire hydrant set too close to curb.



Figure 5. Fire hydrant set further back from curb.



### Relocation for Construction Projects

Utility companies have expressed concern that new road construction projects are not allowing adequate new right-of-way for utility relocations. Generally, the utilities are asked to relocate in the area between the construction limits and the right-of-way line in order to avoid construction. The road designer needs to be aware of the utilities and how construction will affect them. Above-ground power lines pose special problems. Generally a power pole line needs to be straight; the stresses from jogs or bends have to be offset by guy wires or poles, and additional easements may be necessary to set these guy wires and poles. If buried utility lines are installed near the right-of-way line prior to the power pole line relocation, an entire pole line may have to be moved closer to the road to avoid the buried lines.

It is recommended that the road designer meet with the utility companies prior to finalizing the right-of-way limits to minimize utility relocation issues. Some cities in urban areas hold utility meetings during the design process where it is decided in advance where the utility lines will be relocated, and if any extra right-of-way or easements will be required.



Figure 6. Power poles set close to road to avoid buried lines near the r/w line.



## Section 3

### Construction Items Related Only to Telephone & Cable TV

#### Splice Boxes Not at the Right-of-Way Line

The Model Construction Requirements state that all utilities are to be installed as close as possible to the right-of-way line, and contractors usually are aware of this requirement. (See Appendix 1-5, General). A problem can arise at a later date if the buried cable is not installed close to the right-of-way line. For example, if new phone service is needed or the existing line is damaged, some phone company personnel have just installed a pedestal over the existing line, which may be some distance from the right-of-way line. Since the riser is then not set at the right-of-way line, this causes a maintenance issue as well as a traffic safety issue. In situations such as this the utility company should dig up the line each way sufficient to relocate the pedestals to the right-of-way line. Since it is unlikely that there will be enough slack in the line to do this work, additional line must be spliced in and two pedestals installed near the right-of-way line.



Figure 7.  
Splice box set over line at edge of shoulder.

#### Pedestals Visibility in Rural Areas

Most telephone pedestals are an inconspicuous light green so they can blend into the surroundings as much as possible. This causes a problem for counties in rural areas where grass and weeds are mowed only once or twice per year. Counties have reported many instances of mowers hitting pedestals that were hidden in the tall grass. The Model Construction Requirements state that all pedestals placed in rural areas not regularly mowed by the land owners shall be painted orange. (See Appendix 1-5, Vaults & Splicing Facilities).

#### Pedestals and Risers in Front Yards

Many home owners think that pedestals are unsightly, and complain about them being placed in their front yard. Since there is flexibility in the location of risers, the model construction practices state that in residential areas pedestals should be set at property lines when possible. (See Appendix 1-5, Vaults & Splicing Facilities)



Figure 8.  
Large splice box in front yard.

#### Big Boxes in Front Yards

The need for DSL switching and interfaces between fiber and copper line have resulted in the need for bigger boxes with electrical service to handle the necessary equipment. Homeowners object to these types of facilities placed by their home. Careful location is needed to prevent neighborhood complaints. The Model Construction Requirements state that any above-ground facilities that need electric service or have any horizontal dimension exceeding three feet should have the location checked and approved by the local government agency. (See Appendix 1-5, Vaults & Splicing Facilities).

#### Depths in Ditch Area

Many telephone line cuts occur during ditch maintenance operations. For many years the standard buried depth specified by the phone company was 24 inches deep. Most of the buried cable was installed by a plow pulled by a dozer or tractor and did a good job of burying the cable on flat and uniform areas. Because of the geometry of the linkages of the equipment when the plow was pulled across a road ditch or drainage channel, the 24-inch depth could not be maintained.



Figure 9.  
Large splice box and cabinets in front yard.

Local agencies found many cables less than 12 inches deep in the bottom of the ditch, which is the area that they needed to be the deepest. These cables were usually found when doing minor ditch cleaning many years later. Local agencies are now calling for lines to be buried deeper to offset the issues related to cutting lines due to maintenance operations. The increased depth is not as critical in areas without ditches such as new subdivisions with curb and gutter. The Model Construction Requirements call for line depths of 24 inches in utility easements and 30 inches in the right-of-way. (See Appendix 1-5, Bury Depths). There is also a provision in the permit that holds the local agency harmless for damage to cables that were installed less than 24 inches deep in road right-of-way. (See Appendix 1-9, Utility Section).

## Section 4

# Options for Permitting Utility Work

### **Permitting Procedures Should Reflect the Scope of the Issue**

Officials with cities and counties have expressed that they have limited staff and resources to deal with utility concerns. Any new regulations need to be not only effective, but also easy to administer. When considering new permitting regulations and procedures, each local agency should assess the ongoing issues related to utilities and tailor the regulations to the local situation. Larger agencies and those agencies located in growth areas will have more construction work and are likely to have more complex situations, and will need more detailed requirements and procedures.

Appendix 1 includes model forms that are available in electronic format so they can be revised as needed to fit local conditions. As with any new regulation, legal review is essential.

The remainder of this section consists of options that can be considered for implementation. It is in the best interest of both the local government agency and the utility companies to discuss the implications of the various options before an option is chosen by the local agency.

### **Option 1: No Change Needed**

If the local agency is satisfied with their relationship with the utility company and the company's contractors, there may not be a reason to change anything. Each agency has limited staff and there may be other areas where staff efforts would be more beneficial to the local agency.

### **Option 2: Improve Communication**

If the local agency has few utility-related concerns, these might be resolved by better communications. A number of agencies have expressed frustration in not knowing who to call to discuss a concern. An annual meeting with utility companies and their subcontractors to exchange contact information and discuss ongoing concerns would establish relationships and enhance communication.

### **Option 3: Annual Permits**

The local agency may feel that a written agreement is needed to establish various responsibilities and understandings. In this case an annual permit might be a good option. A sample annual permit is included in the appendix. (See Appendix 1-8). This sample permit allows maintenance and service line installation without a separate permit, but anticipates that separate permits will be required for new construction, pavement cuts, sidewalk cuts and for road closures. Miami County has a variation of this option that could be considered. They require an annual registration of all utility companies and their contractors, and then require a utility permit for almost all work in the right-of-way. Information on the Miami County option is available on the county web site <http://www.miamicountyks.org>.

### **Option 4: Individual Permits**

The most control over the activities in the right-of-way is achieved by requiring a permit for any excavation in the right-of-way. This option is also the most time consuming for the local agency and the utility companies. Some of the larger cities in Kansas require permits for any excavation in the right-of-way including maintenance activities and service lines. If the local government agency is considering permits for maintenance activities they may want to have direct conversations with those larger cities to see if the benefits exceed the administrative expense and obtain information on how they handle the large volume of paperwork. Maintenance work normally consists of small projects scattered throughout the service area, and is hard to schedule in advance as priorities change based on the situation. For instance a service outage has priority and may bump a scheduled pole replacement. Utility companies would like to avoid individual permits for maintenance work, and may have suggestions on providing detailed notifications so the work can be inspected without a permit.



# APPENDIX 1

## Model Forms

Construction Requirements and Procedures for Installation of Utilities in the	
Public Right-of-Way .....	Appendix 1-3
Annual Utility Permit Application .....	Appendix 1-8
Utility Permit Application .....	Appendix 1-9
Road Crossing Permit Application-Private Utility .....	Appendix 1-10
Utility Permit Tabulation .....	Appendix 1-11
Notification of Road Closure .....	Appendix 1-12

### Suggestions for Using Model Forms

The model forms in this appendix were developed as a guide for counties, townships, and cities that desire to develop or revise their right-of-way management program.

The sample forms should be reviewed by the local officials responsible for road and street maintenance for application to local conditions and issues. For instance, in some areas of the state, limestone rock is not available, and a substitute material will need to be specified. There are other construction requirements and procedures that may not be appropriate based on geographic area, size of the community, and the specific utilities servicing the area.

This guide has been reviewed by the Kansas Association of Counties; however local conditions and specifics must always be considered. Legal counsel for the local government agency should review the model forms for legal issues and prepare an ordinance or resolution adopting the right-of-way management program. To aid in that process, Appendix 2 includes a draft ordinance prepared by the League of Kansas Municipalities and a bulleted list of items to be included in the resolution or ordinance.

The model forms also are available in Microsoft Word format from the Kansas LTAP at <http://ksltap.kutc.ku.edu>, then click on “Resources to Download.” The forms were drafted for “Sample County,” so counties can do a word search on “Sample County” and replace that phrase with the actual county name. Townships can find & replace “county” with “township” then search for “sample township” and replace with the name of their township. Cities can use a similar approach.





Note: The model forms also are available in Microsoft Word format from the Kansas LTAP at <http://ksltap.kutc.ku.edu>, then click on “Resources to Download.” The forms were drafted for “Sample County,” so counties can do a word search on “Sample County” and replace that phrase with the actual county name. Townships can find & replace “county” with “township” then search for “sample township” and replace with the name of their township. Cities can use a similar approach.

# Construction Requirements and Procedures for Installation of Utilities in the Public Right-of-Way of Sample County, Kansas

January 30, 2007

## General

**Provisions and Specifications** – These provisions and specifications shall be considered as forming an integral part of every permit issued for installation of utilities upon county road and street right-of-way and utility easements under County jurisdiction. The work authorized by any permit shall be done at such time and in such manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the County as herein specified. The work may be performed by the Utility Company or by a Contractor hired by the Utility Company but for simplicity either will be referred to in these construction requirements as “Contractor.” If the County finds at any time, that the work is not being or has not been performed properly, the Contractor (upon being notified by the County) shall immediately stop any new installation, and take the necessary steps at Contractor’s own expense, to place the previous work in condition to conform to said requirements or standards.

**Plans** – Plans for utility installations shall include a description of the size and type of line, the method of installation, and adequate drawings to indicate the location of the proposed facilities with respect to the right-of-way line and the edge of the road.

**Opportunity to view** – Prior to construction the County is to view and approve planned location of any vaults and splice facilities with any horizontal dimension exceeding 36 inches, and power pole lines after pole locations are staked.

**Notification** – The Contractor must notify the County at least one business day before starting construction and at completion of construction. Notification procedure is to phone and email the contact person indicated on the Utility Permit. If no answer, leave a voicemail message stating the utility company name, contractor name, location of work, contact person and call back phone number then follow up with an email with the same information. See the following sections on Road Closures, Backfill Requirements and Street Replacement for additional notification specifications for those items.

**Permit on Job** – A copy of the utility permit and these Construction Requirements shall be kept by the Contractor on the site of the work while it is in progress and shall be exhibited upon request made by any county official.

**Revocation** – In the event of willful failure or neglect by Contractor or its agents to perform and comply with these construction requirements, the County may revoke this permit and order Contractor to remove any and all facilities installed not in conformance with these construction requirements. In the event the Contractor leaves the right-of-way in a condition needing repair or construction, the County may repair such right-of-way and the costs of such repair shall be paid by the Contractor.

**Enforcement** – *It is a Class A infraction as defined by the County Code of Regulation to work on county right-of-way without a permit, and to perform work not in accordance with the permit. A citation resulting in fines may be issued to the Contractor. Unauthorized work performed without county inspection may be required to be removed and reinstalled with proper inspection by the county.*

**Conformity to Laws** – The installation shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.

**Existing Facilities** – Contractor must protect all existing utility installations.

**Easement** – The issuance of a permit does not in any way imply an easement on public or private property.

**Permanent Warning Signs** – For a private utility line crossing the right-of-way, permanent warning signs shall be placed at the right-of-way lines unless the company is a member of the Kansas One Call system. The warning signs shall be placed as pipeline markers and include the name of the owner and emergency contact information.

### **Road Closures**

**Individual permit required** – A separate utility permit is required for each and every road and sidewalk closure (except for plowing across a gravel road), where the road is closed to traffic for less than 15 minutes and the remainder of the construction period traffic is carried through construction with one lane open using flaggers for traffic control.

**Traffic Control Plan** – The Contractor shall provide a traffic control plan for each and every road closure, and furnish the plan to the County for review and approval at least two business days prior to the closure.

**Procedure** – Contractor will coordinate closure with the County. Prior to closure the Contractor will have all traffic control and signing in place. Closure timing will allow for morning and school commutes. The road cannot be closed or open without the specific permission of the County. Permission to close the road will be based on having proper signing in place and equipment on the job to perform the planned work. Permission to open the road will be based on proper repair of the pavement and shoulder so the road can be safely open to traffic. Normally the County will have a representative on site at the time the road is closed and opened. It is important that the contractor keep the County informed of scheduling of backfilling and pavement repair to insure proper inspection and minimize the time the road is closed to traffic.

**Notification** – The Contractor will make the notifications of a closure and opening of the road to emergency services, school bus operators and others shown on the Notification of Road Closure sheet.

### **Traffic and Pedestrian Safety**

**Execution** – Operations shall be so conducted at all times as to permit safe and reasonably free-moving travel over the roads and sidewalks within the limits of the work. If the County finds at any time, that proper signing is not in place, or that conditions may not permit safe travel through the work area, the Contractor (upon being notified by the County) shall immediately stop work, and take the necessary steps to correct any traffic safety concerns.

**Signs** – The Contractor shall provide all safety measures for the movement of traffic and pedestrians in compliance with the version current in Kansas of the Manual on Uniform Traffic Control Devices (MUTCD). These include all signs, warning devices, barricades, flaggers and equipment. Warning devices, signs, and barricades shall be kept clean and in good repair.

**Flaggers** – Flaggers will be required when one lane of traffic is closed or obstructed, except on local streets inside subdivisions.

**Damage to Road** – If signs, pavement or other facilities are damaged, and may be hazardous for traffic, the damage shall be immediately repaired by the Contractor.

**Open Excavations** – Open excavations shall be fenced if left unattended. Excavation near the roadway or sidewalks shall be cribbed or sheeted if necessary to prevent damage to the roadway or sidewalk.

**Weather** – Work shall be suspended during inclement driving weather such as ice, snow, rain or fog.

### **Operations**

**Wet Weather** – No work, other than emergency work, will be permitted on rights-of-way when the soil condition is wet enough to cause rutting or other damage to the right of way.

**Cutting Trees** – The permit herein granted does not confer upon the Contractor the right to cut, remove, or destroy trees or shrubbery within the legal limits of the highway or relieve Contractor from obtaining any consent otherwise required from the owner of the property adjacent thereto.

**Ditches** – All ditches and drain lines shall remain open and operative.

**Driving Limitations** – No driving is allowed onto the road from a ditch, on earth shoulders, or over curbs where damage will occur.

**Lugs on Equipment** – No lugs shall be used on equipment traversing a paved road which may damage the road surface.

**Clean-up** – Street surface and roadside shall be kept clean, neat, and presentable throughout construction.

**Storage** – Generally, materials shall not be stored on the right-of-way. Materials shall not be stored within 10 ft of the edge of the road.

**Parking** – Equipment or vehicles when not in use shall not be parked on the roadway. Equipment shall not be parked at night on the right-of-way.

## **Location**

**General** – The proposed facilities shall be located to the satisfaction of the County. To enhance traffic safety by providing the maximum clear zone available within the existing right-of-way, all utilities should be located as close as possible to the right-of-way line. On relocations for construction projects on the side of the road where a power pole line is planned, the parallel installation of buried utilities shall not be closer than 4 feet to the right-of-way line; at locations for above-ground facilities, the line would deflect to the right-of-way line so the above-ground facility could be placed at the right-of-way line. In subdivisions with platted utility easements, the facilities should be located in the utility easement if room is available. To allow room for all utilities, lines owned by the same utility company will not be allowed on both sides of the road, so if a line is upgraded the old line will have to be abandoned.

**Vaults & Splicing Facilities** – Vaults shall be placed and staggered so they do not block corridors for future utility installations. Above ground splicing facilities must be located away from front yards and landscaped areas. Location of splice vaults and above ground splicing facilities with any horizontal dimension exceeding 3 feet must be specifically approved in the field by the County. The proposed location must be staked and all utilities in the area located and marked prior to the site visit. Pedestals placed in front yards in residential areas should be placed near side property lines. Telephone pedestals placed in rural areas in locations that are not mowed regularly by the land owner shall be painted orange so they can be more easily seen by road mowers.

**Above Ground** – All above-ground facilities should be located as close as possible to the right-of-way line, and no facilities that extend more than 4 inches above the ground shall be placed within 10 feet of the edge of a road surface. Pedestals, poles, guys, anchors and other above-ground items shall not be located in a ditch, at drainage structure openings, or on the road shoulder, and shall be located to minimize interference with road maintenance operations. Overhead lines crossing the road shall be at least 18 feet above the road surface.

**Bury Depths** – In road and street right-of-way, buried pipes shall be not less than three feet deep; and buried telephone and cable lines shall not be less than 30 inches deep. In dedicated utility easements, all lines shall be placed according to utility standards. In combination utility and drainage easements, lines shall not be less than 30 inches deep.

**Bridge Attachments** – Bridge attachments are allowed as part of a normal utility permit for cable TV and telecommunications with casing less than 2 inches in diameter located on the outside of the handrail of concrete and steel bridges. All other bridge attachments will require a special permit with plans prepared by a professional engineer.

**Manholes in Pavement** – Manholes, valves, etc. shall be placed ½ inch lower than finished grade in paved surfaces, and 4 inches below finished grade in rock and dirt road surfaces.

**Boring** – Installation of lines across paved roads and sidewalks shall be by boring or jacking. Boring by water jetting or puddling is not be permitted. The top edge of the bore pit shall be located at least four feet from the edge of a gravel road or paved road. On paved roads with a shoulder, the top edge of the pit shall not encroach on the road shoulder. To prevent humping of the road or cracks in the pavement, the depth under the pavement for jacking and directional boring shall be 1 ft. for each inch of diameter of the jacking cone. In subdivisions where sidewalk will be constructed when the home is built, boring is required under the area where the sidewalk will be located. As an alternate to boring under the future sidewalk, use flowable fill in the future sidewalk area.

**Backfill Requirements** – Normal backfill requirements are compacted material removed from the trench. Under existing or future sidewalks and pavements, special backfill is required as shown on the standard road repair detail, which is a part of these construction requirements. (See Appendix 1-7, Road Repair Detail). Notify the county of the schedule for backfilling under pavement and sidewalks so an official has an opportunity to inspect the backfill while in progress. Failure to give adequate notice is basis for forfeiting any deposit as well as having the work rejected. In new subdivisions flowable fill is required under future pavement and sidewalks where the trench width exceeds 6 inches; for trenches less than 6 inches rock backfill is acceptable.

**Sidewalk & Curb Replacement** – Sidewalk and curb replacement shall be poured and finished to match existing sidewalk & curb. Remove walk and curb to the nearest joint. Concrete shall be 4,000 psi with air entrainment, cured with a spray-on curing compound, and protected from hot and cold weather for 7 days when necessary. Sidewalk shall not be less than 4 inches thick.

**Street Replacement** – Streets will be repaired in accordance with the standard street repair detail which is a part of these Model Construction Requirements. Notify the county of the schedule for paving to provide an opportunity by the County to inspect the repair while in progress. Failure to give adequate notice is basis for forfeiting any deposit as well as having the work rejected.

### **Cleanup and Restoration**

**Time** – Immediately after completion of the installation of the facilities, the road and right-of-way shall be restored to a condition equal to that existing before commencement of the described work.

**Methods** – All materials and construction methods used to restore the pavement, base and subbase shall be equal to or better than that required by the current edition of the “Kansas Department of Transportation Standard Specifications for Road and Bridge Construction.”

**Ditches** – Restore all ditches and slopes to the original configuration.

**Yards** – Disturbed areas in yards shall be smoothed and hand raked. All areas shall be sodded except for trenches or plow marks less than 12 inches wide, which shall be seeded and mulched. Any landscaping items, shrubs, and trees destroyed or damaged by the work shall be replaced.

**Seeding & Sodding** – All disturbed grassed areas shall be seeded and mulched, or sodded. Areas shall be maintained until turf is established.

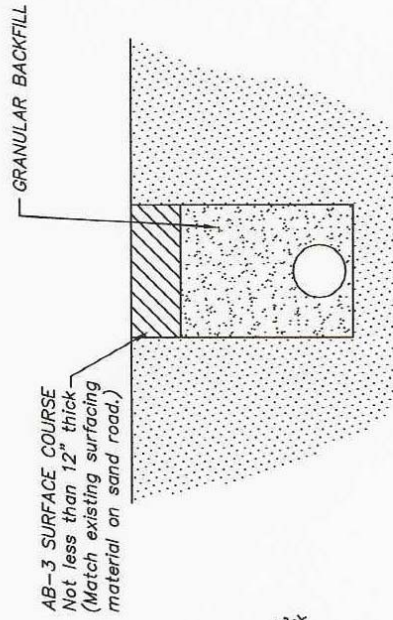
**Settlement** – The Contractor shall be responsible for repairing any settlement resulting from this work.

**Maintenance** – The Contractor shall replace and stabilize all earth cover and vegetation where it has eroded where such erosion or vegetation damage is caused by the placement or existence of the utility facility.

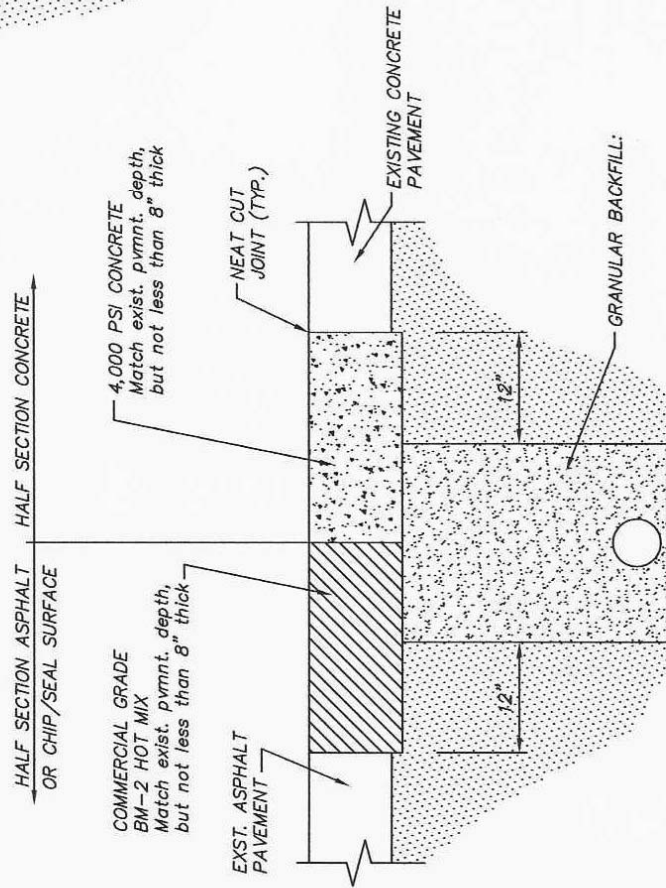
### **Final Inspection**

To receive acceptance of the work authorized by a utility permit, completion of the work must be verified by a final inspection. It is the Contractor’s responsibility to call for a final inspection. The Contractor will pothole buried lines at locations indicated by county inspector to verify that lines were buried as required in the permit. If work or restoration is found to be defective or insufficient the Contractor shall complete said work and call for a re-inspection. The deposit, if any, will be returned after the work has been inspected and approved by the County.

Prior to any repairs, the County/City must be notified, see Permit for contact information



Gravel or Dirt Road



Asphalt or Concrete Street

Granular backfill required under roadway from shoulder to shoulder, remainder of backfill on r/w to be compacted earth.

Granular Backfill Options

1. low strength flowable fill
2. cleaned screen rock such as CM-K or CA-5
3. vibrated sand (6" max. lifts)
4. compacted AB-3 (6" max. lifts)

## ROAD REPAIR DETAIL

### Annual Utility Permit Application

**Utility Section: WHEREAS,** (Name of Utility) \_\_\_\_\_ hereinafter termed "Utility", requests permission and authority to install, operate, and maintain facilities within public rights-of-way under the jurisdiction of Sample County. And, Whereas, Sample County has regulations requiring a permit to excavate within right-of-way, the Utility requests permission to perform maintenance work and installation of service lines in accordance with this annual permit. The Utility agrees the proposed work will be located and constructed to the satisfaction of the County. The material and construction methods used on all the work within the right-of-way limits shall conform to the Sample County Construction Requirements dated January 2007. Utility agrees that a separate individual utility permit is required for new construction, each road closure and each pavement or sidewalk cut. In the event of an emergency, the Utility will make notification of the emergency to the County contacts listed below, and if a pavement repair or road closure is required, the Utility will submit a Utility Permit within two business days.

Utility, and its contractor, if any, will promptly complete any work started, and agrees to complete work and restore the road and right-of-way to a condition equal to that existing prior to that existing before commencement of the work. Utility or its contractor shall notify Sample County prior to beginning work, and at such times stated in the Construction Requirements by emailing the contact individual listed below. The Utility, its successors or assigns, shall hold harmless Sample County from all risk and liability for accidents and damages that may accrue to persons or property on account of this work.

Utility agrees to hold harmless Sample County for any damage to utility's facilities due to road construction or maintenance activities if Utility's facilities are not originally installed at least 24" deep, or are not installed at least 18' above the roadway surface. That in the event Sample County deems it necessary or proper to make any alteration or improvement along or upon the road or right-of-way the Utility agrees that upon notice being served upon him, he will, within a reasonable time, adjust his facilities to clear the proposed work as requested by Sample County. If the facilities are located upon existing road right-of-way the required adjustments shall be made without expense to Sample County. The permit is hereby requested and the provisions of the permit hereby accepted and agreed to.

Signature of authorized official	Printed Name	Title	Date
Address	City	State & Zip Code	E-mail
Utility Contact for this project	Phone(day)	Phone(emergency)	E-mail

**Sample County Approval Section:** This permit is hereby granted for a period of one year.

Signature	Printed Name	Title	Date	Phone(Day)	Phone(Emergency)	E-Mail
Special Conditions: _____						

#### Utility Contact Information:

Address	City	State	Zip Code
Name (Contact for this permit)	Phone(day)	Phone(emergency)	E-mail
Name (Alternate Contact for this permit)	Phone(day)	Phone(emergency)	E-mail

#### Contractor Contact Information (If applicable): Company Name:

Address	City	State & Zip Code	E-mail
Name (Contact for this permit)	Phone(day)	Phone(emergency)	E-mail
Name (Alternate Contact for this permit)	Phone(day)	Phone(emergency)	E-mail

#### County Contact Information:

Name (Contact for this permit)	Phone(day)	Phone(emergency)	E-mail
Name (Alternate Contact for this permit)	Phone(day)	Phone(emergency)	E-mail



### Utility Permit Application

**Utility Section: WHEREAS, (Name of Utility)** \_\_\_\_\_

hereinafter termed "Utility", requests permission and authority to install, operate, and maintain facilities on any attached plans prepared by Utility within public rights-of-way under the jurisdiction of Sample County, and located as follows: \_\_\_\_\_

Work Order No.: \_\_\_\_\_

Description of line: Type \_\_\_\_\_ Size \_\_\_\_\_ Material \_\_\_\_\_ Depth of bury \_\_\_\_\_

Type of buried road crossings, if any: ☐ Boring ☐ Trenching ☐ Backhoe ☐ Plowing

Permission requested to close the road? ☐ No ☐ Yes If yes, how many days? \_\_\_\_\_. Attach traffic control plan.

Permission requested to cut pavement or sidewalk? ☐ No ☐ Yes If yes, give length & width: \_\_\_\_\_.

Work to be performed by contractor? ☐ No ☐ Yes If yes, give name: \_\_\_\_\_

(Note: A separate permit is required for each road closure and each pavement or sidewalk cut)

The Utility agrees the proposed work will be located and constructed to the satisfaction of the County. The material and construction methods used on all the work within the right-of-way limits shall conform to the Sample County Construction Requirements dated January 2007, and any attached county drawings. Utility agrees not to close road to traffic except for authorized road cuts.

Utility, and its contractor, if any, plans to commence work on \_\_\_\_\_, and agrees to complete work and restore the road and right-of-way to a condition equal to that existing prior to that existing before commencement of the work within \_\_\_\_\_ weeks after the date the work is scheduled to commence. Utility or its contractor shall notify Sample County prior to beginning work, and at such times stated in the Construction Requirements by contacting the contact individual listed below. The Utility, its successors or assigns, shall hold harmless Sample County from all risk and liability for accidents and damages that may accrue to persons or property on account of this work.

Utility agrees to hold harmless Sample County for any damage to utility's facilities due to road construction or maintenance activities if Utility's facilities are not originally installed at least 24" deep, or are not installed at least 18' above the roadway surface. That in the event Sample County deems it necessary or proper to make any alteration or improvement along or upon the road or right-of-way the Utility agrees that upon notice being served upon him, he will, within a reasonable time, adjust his facilities to clear the proposed work as requested by Sample County. If the facilities are located upon existing road right-of-way the required adjustments shall be made without expense to Sample County. The permit is hereby requested and the provisions of the permit hereby accepted and agreed to.

Signature of authorized official	Printed Name	Title	Date
Address	City	State & Zip Code	E-mail
Utility Contact for this project	Phone(day)	Phone(emergency)	E-mail

**Contractor Section(If applicable): WHEREAS, (Name of Contractor)** \_\_\_\_\_

hereinafter termed "Contractor", requests permission and authority to install Utility's facilities as described above under the terms and conditions agreed to by the Utility. Contractor hereby deposits with this permit a cashiers check in the amount of \$500 if there is no road cut and \$2,000 if there is a road cut to ensure proper completion of the work. The deposit will be returned by Sample County after the work has been inspected and approved. However, if contractor fails to perform the work properly Sample County may use all or a portion of the deposit to cover expenses to complete the work properly. Contractor shall notify Sample County prior to beginning work, and at such times stated in the Construction Requirements by contacting the contact individual listed below. The Contractor, his successors or assigns, shall hold harmless Sample County from all risk and liability for accidents and damages that may accrue to persons or property on account of this work. The permit is hereby requested and the provisions of the permit hereby accepted and agreed to.

Signature of authorized official	Printed Name	Title	Date
Address	City	State & Zip Code	E-mail
Contact for this project	Phone(day)	Phone(emergency)	E-mail

**Sample County Approval Section:** This permit is hereby granted

Signature:	Printed Name	Title	Date	Phone(Day)	Phone(Emergency)	E-Mail
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Special Conditions: \_\_\_\_\_

Final inspection date: \_\_\_\_\_ Date of completion and acceptance \_\_\_\_\_ Signed: \_\_\_\_\_

Amount of deposit returned \$ \_\_\_\_\_

### Road Crossing Permit Application-Private Utility

**Utility/Owner Section: WHEREAS, (Name of Applicant)** \_\_\_\_\_

hereinafter termed the Applicant, requests permission and authority to install, operate, and maintain a private utility line across a public road right-of-way under the jurisdiction of Sample County, described as follows:

Location \_\_\_\_\_ Street a distance of \_\_\_\_\_ ft. \_\_\_\_\_ of the intersection of \_\_\_\_\_ St.

Address of building to be served by the proposed line: \_\_\_\_\_ Work Order #: \_\_\_\_\_

Description of line: Type \_\_\_\_\_ Size \_\_\_\_\_ Material \_\_\_\_\_ Depth of bury \_\_\_\_\_

Type of crossing: ☐ Boring ☐ Trenching ☐ Backhoe ☐ Plowing

Applicant agrees to hold harmless Sample County for any damage to Applicant's facilities due to road construction or maintenance activities if Applicant's facilities are not installed at least 36" deep. That in the event Sample County deems it necessary or proper to make any alteration or improvement along or upon the road or right-of-way the Applicant agrees that upon notice being served upon him, he will, within a reasonable time, adjust his facilities to clear the proposed work as requested by Sample County. If the facilities are located upon existing road right-of-way the required adjustments shall be made without expense to Sample County. If Applicant is not a member of One-Call system, applicant will install permanent warnings signs(pipeline markers) at both right-of-way lines at the road crossing. The permit is hereby requested and the provisions of the permit hereby accepted and agreed to.

Signature of authorized official \_\_\_\_\_ Printed Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State & Zip \_\_\_\_\_ E-mail \_\_\_\_\_

Utility Contact for this project \_\_\_\_\_ Phone(day) \_\_\_\_\_ Phone(emergency) \_\_\_\_\_ E-mail \_\_\_\_\_

**Contractor Section: WHEREAS, (Name of Contractor)** \_\_\_\_\_

hereinafter termed the Contractor, requests permission and authority to install Applicant's private utility line as described above and on the back of this sheet and any attached plans prepared by Applicant across public rights-of-way under the jurisdiction of Sample County.

The Contractor agrees the proposed work will be located and constructed to the satisfaction of the County. The material and construction methods used on all the work within the right-of-way limits shall conform to the Sample County Construction Requirements dated January 2007, and any attached county drawings. Contractor agrees not to close road to traffic except for authorized road cuts,

Permission requested to close the road? ☐ No ☐ Yes If yes, how many days? \_\_\_\_\_. Attach traffic control plan.

Permission requested to cut pavement or sidewalk? ☐ No ☐ Yes If yes, give length & width: \_\_\_\_\_.

Contractor plans to commence work on \_\_\_\_\_, and agrees to complete work and restore the road and right-of-way to a condition equal to that existing prior to that existing before commencement of the work within \_\_\_\_\_ weeks after the date the work is scheduled to commence. Contractor hereby deposits with this permit a cashiers check in the amount of \$500 if there is no road cut and \$2,000 if there is a road cut to ensure proper completion of the work. The deposit will be returned by Sample County after the work has been inspected and approved. However, if contractor fails to perform the work properly Sample County may use all or a portion of the deposit to cover expenses to complete the work properly.

Contractor shall notify Sample County prior to beginning work, and at such times stated in the Construction Requirements by contacting the contact individual listed below. A certificate of insurance is attached for commercial general liability and automobile liability.

The Contractor, his successors or assigns, shall hold harmless Sample County from all risk and liability for accidents and damages that may accrue to persons or property on account of this work.

The permit is hereby requested and the provisions of the permit hereby accepted and agreed to.

Signature of authorized official \_\_\_\_\_ Printed Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State & Zip \_\_\_\_\_ E-mail \_\_\_\_\_

Contact for this project \_\_\_\_\_ Phone(day) \_\_\_\_\_ Phone(emergency) \_\_\_\_\_ E-mail \_\_\_\_\_

**Sample County Approval Section: This permit is hereby granted**

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_ Phone(Day) \_\_\_\_\_ Phone(Emergency) \_\_\_\_\_ E-Mail \_\_\_\_\_

Special Conditions: \_\_\_\_\_

Final inspection date: \_\_\_\_\_ Date of completion and acceptance \_\_\_\_\_ Signed: \_\_\_\_\_

Amount of deposit returned \$ \_\_\_\_\_



[illegible]

Note: This sample form was prepared to track status of utility permits and deposits.

**Notification of Road Closure**  
SAMPLE COUNTY UNINCORPORATED AREA

<b>Date:</b>		<b>Road Name/Number:</b>	
<b>Location:</b>			
<b>Date of Closure:</b>		<b>Approximate Length of Closure:</b>	
<b>Reason for Closure:</b>			
<b>Requested by:</b>			
<b>Special Instructions:</b>			

**Notification List**

Note: The below listed notifications are to be made by utility company making the closure.

	Name of Person to be Notified	Phone #	Name of Person Notified	Time & Date Notified	
				Closed	Open
<b>Fire</b>					
<b>Sheriff/Police</b>					
<b>Transit Agency</b>					
<b>Postmaster</b>					
<b>Public Works</b>					
<b>Public Schools: (When in session)</b>					

Completed by: \_\_\_\_\_

Note: This sample form was prepared anticipating that the Utility or a Contractor would make the notification that the road was closed, and then notification when the road was opened. This form would be modified for each county with contact names and phone numbers so the Utility or Contractor would know whom to contact.

## Appendix 2

# Guide for Resolution Adopting Permit Requirements

### Checklist for Preparing a Right-of-Way Ordinance

If a local agency would like to adopt a right-of-way management ordinance, it is suggested that they start with the Draft Right-of-Way Ordinance prepared by the League of Kansas Municipalities. This document is available in Word format on the League web site. The American Public Works Association (APWA) has a Model Right of Way Ordinance for Underground Occupancy, which also might be of some help in developing an ordinance. The APWA documents can be found on the internet at [http://www.apwa.net/Documents/ResourceCenter/Model\\_ROW\\_Ordinance.pdf](http://www.apwa.net/Documents/ResourceCenter/Model_ROW_Ordinance.pdf). If the City franchises utilities, many construction and permit related items are usually included in the franchise agreement, so these items will need to be coordinated. Franchise agreements do not cover all utilities, such as gas transmission companies, private plumbers installing service lines, and work by developers in new subdivisions, so separate ordinance will be needed for control of non-franchised utilities.

Following is a listing of items that should be considered in a right-of-way ordinance.

Definitions: Public Right-of-Way, public utility, and private utilities. See KSA 66-104  
Reference to franchise agreements, if applicable  
Prohibition of private utilities on right-of-way except for crossings.  
Permit required for all excavation in right-of-way\*  
Require that roads & streets are to be bored where practical.  
Clarify if permit is required for work on platted utility easements  
Provisions for emergency work without a permit\*  
Repair & restoration of right-of-way\*  
Relocation at utility expense\*  
Fees, if any\*  
Indemnity\*  
Claim Notification\*  
Penalty Provision\*  
Authorize certain officials to execute the permits for the city/county  
Adopt Construction Requirements by reference  
Insurance Requirements of utility and their contractors and requirement that a certificate of insurance be on file for all private contractors.  
Specify if Performance Bonds are required.  
Specify if deposits are required, and when they are forfeited. Recommended practice is \$500 deposit for each permit for work by private contractors, and \$2,000 for each permit involving a road or sidewalk cut by private contractors. Deposit would be forfeited if restoration was not properly completed, or if notification not made to city/county to observe backfill of road and sidewalk cuts.

\*These items are included in the League Draft Right-of-Way Ordinance



# Kansas Statutes Annotated (K.S.A.)

## K.S.A. 17-623

### Chapter 17.--CORPORATIONS

#### Article 6.--POWERS AND DUTIES OF CORPORATIONS

**17-623. Sewerage corporations; powers in cities.** Any sewerage corporation shall have full power to construct, operate and maintain a sewer, sewers, or a system of sewerage, as may be required by the city where located, for the public and private use, convenience and health of the residents of said city, or for other purposes; and such corporations shall have power to lay or construct pipes, mains, and conductors, for operating said corporation's sewer, sewers, or system of sewerage, through the streets, lanes, alleys and squares in such city, with the consent of the municipal authorities thereof, and under such regulations as they may prescribe.

**History:** L. 1885, ch. 103, § 1; March 14; R.S. 1923, 17-623.

## K.S.A. 17-1901

### Chapter 17.--CORPORATIONS

#### Article 19.--TELEGRAPH, TELEPHONE AND TRANSMISSION LINES

**17-1901. Poles, wires and fixtures of telegraph companies.** Corporations created for the purpose of constructing and maintaining magnetic telegraph lines are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this state, in such manner as not to incommode the public in the use of such roads, streets and waters.

**History:** G.S. 1868, ch. 23, § 74; Oct. 31; R.S. 1923, 17-1901.

## K.S.A. 17-1902

### Chapter 17.--CORPORATIONS

#### Article 19.--TELEGRAPH, TELEPHONE AND TRANSMISSION LINES

**17-1902. Rights, powers and liabilities of telecommunications service providers; occupation of public right-of-way; prohibition of use.** (a) (1) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(2) "Provider" shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

(3) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(4) "Competitive infrastructure provider" means an entity which leases, sells or otherwise conveys facilities located in the right-of-way, or the capacity or bandwidth of such facilities for use in the provision of telecommunications services, internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the city.

(b) Any provider shall have the right pursuant to this act to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon and under any public right-of-way in this state. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

(c) Nothing in this act shall be interpreted as granting a provider the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(d) The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city. A city may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Nothing herein shall be construed to limit the authority of cities to require a competitive infrastructure provider to enter into a contract franchise ordinance.

(e) The city shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

(1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers;

(2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

(3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

(4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

(f) A provider's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the city governing body. A city governing body's denial of a provider's request to use or occupy a specific portion of the public right-of-way may be appealed to a district court.

(g) A provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(h) A city may not impose the following regulations on providers:

(1) Requirements that particular business offices or other telecommunications facilities be located in the city;

(2) requirements for filing applications, reports and documents that are not reasonably related to the use of a public right-of-way or this act;

(3) requirements for city approval of transfers of ownership or control of the business or assets of a provider's business, except that a city may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and

(4) requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the city, political subdivision or any other provider or public utility.

(i) Unless otherwise required by state law, in the exercise of its lawful regulatory authority, a city shall promptly, and in no event more than 30 days, with respect to facilities in the public right-of-way, process each valid and administratively complete application of a provider for any permit, license or consent to excavate, set poles, locate lines, construct facilities, make repairs, effect traffic flow, obtain zoning or subdivision regulation approvals, or for other similar approvals, and shall make reasonable effort not to unreasonably delay or burden that provider in the timely conduct of its business. The city shall use its best reasonable efforts to assist the provider in obtaining all such permits, licenses and other consents in an expeditious and timely manner.

(j) If there is an emergency necessitating response work or repair, a provider may begin that repair or emergency response work or take any action required under the circumstances, provided that the telecommunications provider notifies the affected city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

(k) A city may require a provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent affiliate, employee, or subcontractor of that provider, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the provider fails to make the repairs required by the city, the city may effect those repairs and charge the provider the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against a provider for

violation of this subsection, and may recover its damages, including reasonable attorney fees, if the provider is found liable by a court of competent jurisdiction.

(l) If requested by a city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a telecommunications company promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such provider's failure to timely relocate or adjust its facilities shall be borne by such provider.

(m) No city shall create, enact or erect any unreasonable condition, requirement or barrier for entry into or use of the public rights-of-way by a provider.

(n) A city may assess any of the following fees against a provider, for use and occupancy of the public right-of-way, provided that such fees reimburse the city for its reasonable, actual and verifiable costs of managing the city right-of-way, and are imposed on all such providers in a nondiscriminatory and competitively neutral manner:

(1) A permit fee in connection with issuing each construction permit to set fixtures in the public right-of-way within that city as provided in K.S.A. 17-1901, and amendments thereto, to compensate the city for issuing, processing and verifying the permit application;

(2) an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity of the provider, their assigns, contractors and/or subcontractors with the exception of construction and repair activity required pursuant to subsection (l) of this act related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

(3) inspection fees to recover all reasonable costs associated with city inspection of the work of the telecommunications provider in the right-of-way;

(4) repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, and/or subcontractors in the right-of-way; and

(5) a performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(o) A city may not assess any additional fees against providers for use or occupancy of the public right-of-way other than those specified in subsection (n).

(p) This act may not be construed to affect any valid taxation of a telecommunications provider's facilities or services.

(q) Providers shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a provider and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the city and provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(r) A provider or city shall promptly advise the other in writing of any known claim or demand against the provider or the city related to or arising out of the provider's activities in a public right-of-way.

(s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is intended to affect the validity of any franchise fees collected pursuant to state law or a city's home rule authority.

(t) Any ordinance enacted prior to the effective date of this act governing the use and occupancy of the public right-of-way by a provider shall not conflict with the provisions of this act.

**History:** L. 1907, ch. 140, § 3; R.S. 1923, 17-1902; L. 2002, ch. 32, § 2; July 1.



**K.S.A. 17-4604**  
**Chapter 17.--CORPORATIONS**  
**Article 46.--ELECTRIC COOPERATIVE, NONPROFIT, MEMBERSHIP CORPORATIONS**

**17-4604. Powers.** In addition to the powers conferred on all corporations under article 61 of chapter 17 of the Kansas Statutes Annotated, a cooperative shall have power to:

- (a) Sue and be sued in its corporate name;
- (b) have perpetual existence;
- (c) adopt a corporate seal and alter the same;
- (d) generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy to its members, and to governmental agencies, political subdivisions, and to other persons, who are not receiving central station service from facilities of existing public utilities;
- (e) assist its members, governmental agencies, political subdivisions and other persons to whom electric energy or other services are or will be supplied by the cooperative, in wiring their premises and in acquiring, installing and financing electrical and plumbing appliances, equipment, fixtures and apparatus and such corporations may purchase, acquire, lease as lessor or lessee and sell electric and plumbing appliances, equipment, fixtures and apparatus also including, but not limited to, electrical equipment or systems which produce or convert energy or cause more efficient utilization of energy;
- (f) construct, purchase, lease, and to equip, maintain and operate, and to sell, assign, convey, lease, mortgage, pledge or encumber electric transmission and distribution lines or systems, electric generating plants, and lands, buildings, structures, dams, easements and rights-of-way, equipment, and any other real or personal property, tangible or intangible, necessary to accomplish the purpose for which the cooperative may be organized hereunder;
- (g) purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;
- (h) borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;
- (i) construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, roads, highways, streets, alleys, bridges and causeways in conformity with the laws of the state of Kansas;
- (j) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of such power by other corporations constructing or operating electric transmission and distribution lines or systems;
- (k) become an incorporator, promoter, manager, member, stockholder or owner of other corporations or cooperatives, and conduct its business and exercise its powers within this state and to participate with other persons in any corporation, cooperative, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating person would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;
- (l) adopt, amend and repeal bylaws; and
- (m) do and perform any other acts and things, and to have and exercise any other powers which may be necessary, to accomplish the purpose for which the cooperative is organized.

**History:** L. 1941, ch. 185, § 4; L. 1978, ch. 81, § 1; L. 1986, ch. 92, § 2; July 1.

**K.S.A. 66-104**  
**Chapter 66.--PUBLIC UTILITIES**  
**Article 1.--POWERS OF STATE CORPORATION COMMISSION**

**66-104. Utilities subject to supervision; exceptions.** (a) The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

(b) The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located outside of and more than three miles from the corporate limits of such municipality, but nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. 66-131a, and amendments thereto.

(c) Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as provided in K.S.A. 66-133, and amendments thereto, and to the provisions of K.S.A. 66-104e, and amendments thereto. A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolley bus and motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the commission.

(d) The term "public utility" shall not include any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel.

(e) At the option of an otherwise jurisdictional entity, the term "public utility" shall not include any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility which:

(1) Is newly constructed and placed in service on or after January 1, 2001; and

(2) is not in the rate base of: (A) An electric public utility that is subject to rate regulation by the state corporation commission; (B) any cooperative, as defined by K.S.A. 17-4603 and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state; or (C) a municipally owned or operated electric utility.

(f) Additional generating capacity achieved through efficiency gains by refurbishing or replacing existing equipment at generating facilities placed in service before January 1, 2001, shall not qualify under subsection (e).

(g) For purposes of the authority to appropriate property through eminent domain, the term "public utility" shall not include any activity for the siting or placement of wind powered electrical generators or turbines, including the towers.

**History:** L. 1911, ch. 238, § 3; R.S. 1923, 66-104; L. 1949, ch. 335, § 1; L. 1951, ch. 366, § 1; L. 1968, ch. 333, § 6; L. 1974, ch. 262, § 1; L. 1975, ch. 339, § 1; L. 1978, ch. 263, § 2; L. 1992, ch. 69, § 1; L. 1997, ch. 84, § 1; L. 2001, ch. 206, § 1; L. 2005, ch. 72, § 2; July 1.

# Right of Way Management Post SB 397 (2002)

by Kim Gulley

Director of Policy Development & Communications

League of Kansas Municipalities

presented to the

City Attorneys Association of Kansas

October 24, 2003

## Frequently Asked Questions

*(since the passage of SB 397 in 2002)*

### **Q: Are franchise agreements still required?**

A: All entities using the right-of-way are still required to have a franchise pursuant to K.S.A. 12-2001 *et seq.* Subsections (c)-(r) apply ONLY to telecommunications providers.

### **Q: How did SB 397 affect right-of-way management?**

A: Right-of-way provisions may be found in K.S.A. 17-1902. In statute, they apply only to telecommunications providers. However, it is recommended that cities apply these standards to all users of the public right-of-way.

### **Q: Do we still have to read a franchise in its entirety three times before adoption?**

A: Changes in SB 397 relating to the process for franchise agreements apply to ALL franchises. In other words, there is no longer a 3-reading requirement for ANY franchise.

### **Q: Do we have to re-do our existing franchise agreements?**

A: SB 397 DID NOT affect existing franchise agreements. In fact, it specifically protected them as follows: "...this act does not affect the validity of a franchise agreement or contract ordinance with a telecommunications local exchange service provider so long as the franchise agreement or contract ordinance does not include a linear foot charge and/or a minimum fee, was enacted prior to the effective date of this act, and was agreed to by the telecommunications local exchange service provider." K.S.A. 12-2001(q)

### **Q: Why is Sprint asking us to change our existing agreement?**

A: Sprint has sent out a letter asking cities to amend their franchise agreement to include the new definition of "gross receipts" because of a billing issue. The original letter indicated that the mayor could simply sign a paper agreeing to the change. LKM argued that in order to amend a franchise ordinance, another ordinance was required and Sprint sent out a second letter. LKM reviewed the second letter and ordinance which they sent out. In most cases, this change should result in increased revenue because the new definition is broader than the previous one.

### **Q: Does my city need a right-of-way management ordinance?**

A: Cities should consider adopting a right-of-way management ordinance which applies to all occupants of the public right-of-way. Then, adopt the remaining provisions of the agreement (e.g., term of agreement, and fee to be charged) with utility providers in a franchise ordinance.



# Draft Right-of-Way Ordinance

## (from the Kansas League of Municipalities)

**Section 1. Definitions.** (a) “Public right-of-way” means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(b) “Occupant” means any person, firm, corporation, association, utility, or entity, which enters upon the right-of-way of the City, or in any manner establishes a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto.

**Section 2. Authorization From City Required.** (a) No person, firm, corporation, association, utility, or entity, shall enter upon the right-of-way of the City, or in any manner establish a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto, without the express written permission of the City. The permission of the City may be granted by a franchise agreement pursuant to the provisions of K.S.A. 12-2001 et seq. or by such other agreement as the governing body determines best protects the public interest in the right-of-way.

(b) Nothing in this ordinance shall be interpreted as granting an occupant the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(c) The city shall process each valid and administratively complete application for use of the right-of-way within 30 days.

**Section 3. Health, Safety, and Welfare Regulations.** The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city.

**Section 4. Specific Portions of Right-of-Way Restricted.** (a) The city hereby prohibits the use or occupation of the following specific portions of public right-of way: \_\_\_\_\_

[See K.S.A. 17-1902(e) for the standards which must be followed when prohibiting use of a specific portion of the right-of-way. It reads as follows: The city shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following: (1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers; (2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality; (3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or (4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.]

(b) If the city denies a request to use or occupy a specific portion of the public right-of-way, the requester shall be served a notice of such denial by first class mail. The notice shall indicate that the requester shall have 10 days from the date of receipt of the notice to request a public hearing by the city governing body concerning the denial. Failure to make a timely request for a hearing shall constitute a waiver of the person’s right to contest the denial before the governing body. The hearing shall be held by the governing body within 30 days after the filing of the request therefore, and the potential occupant shall be advised by the city of the time and place of the hearing. Following the public hearing, if the city governing body denies a potential occupant’s request to use or occupy a specific portion of the public right-of-way, such determination may be appealed to district court.

**Section 5. Compliance With, Manual of Uniform Traffic Control Devices.** Any occupant of the public right-of-way shall comply with the provisions of Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), published by the U.S. Department of Transportation, Federal Highway Administration, 1988 Edition, Revision 3, dated September 3, 1993, which is incorporated herein by reference as if fully set forth herein.

**Section 6. Additional Requirements.** [Cities may impose additional requirements on right-of-way occupants so long as they do not include the following:

(1) Requirements that particular business offices or other telecommunications facilities be located in the city;

- (2) requirements for filing applications, reports and documents that are not reasonably related to the use of a public right-of-way or this act;
- (3) requirements for city approval of transfers of ownership or control of the business or assets of a provider's business, except that a city may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and
- (4) requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the city, political subdivision or any other provider or public utility.]

**Section 7. Emergencies.** If there is an emergency necessitating response work or repair, any person, firm, corporation, association, utility, or entity which has been granted permission to occupy the public right-of-way may begin that repair or emergency response work or take any action required under the circumstances, provided that the person, firm, corporation, association, utility, or entity notifies the city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

**Section 8. Repair.** Any occupant of the public right-of-way is hereby required to repair all damage to a public right-of-way caused by the activities of that occupant, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the occupant fails to make the repairs required by the city, the city may effect those repairs and charge the occupant the cost of those repairs.

**Section 9. Relocation.** Whenever requested by the city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, an occupant promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such occupant's failure to timely relocate or adjust its facilities shall be borne by such occupant.

**Section 10. Fees.** The following fees shall be assessed against occupants of the public right-of-way:

- (a) A permit fee of \_\_\_\_\_;
- (b) an excavation fee of \_\_\_\_\_ for each street or pavement cut [imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street].
- (c) An inspection fee of \_\_\_\_\_;
- (d) Repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, and/or subcontractors in the right-of-way; and
- (e) A performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

**Section 11. Indemnity.** (a) Occupants shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the occupant, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

(b) The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If an occupant and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law.

(c) This section is solely for the benefit of the city and occupant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

**Section 12. Claim Notification.** An occupant shall promptly advise the other in writing of any known claim or demand against the provider or the city related to or arising out of the occupant's activities in a public right-of-way.

**Section 13. Penalty Provision.** Any person, firm, corporation, association, utility, or entity, or agent, contractor or subcontractor thereof, violating any provision of this article, shall be guilty of a municipal offense, and shall upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense.



