

RESOLUTION NO 2012- 13

THE COUNTY COMMISSION OF KIOWA COUNTY, KANSAS PERMITTING USE OF COUNTY RIGHT-OF-WAY BY UTILITIES

WHEREAS, the Board of County Commissioners of Kiowa County, Kansas has the power, pursuant to K.S.A. 19-101a, to regulate activities within the public right-of-way and to authorize and require permits and assess fees in connection with such regulation; and

WHEREAS, the Board of County Commissioners of Kiowa County, Kansas have determined it is necessary and desirable and in the best interest of the County to require a permitting process for the general health, welfare and safety of the public.

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Kiowa County Kansas, that it makes the following resolution relating to the access to County right-of-ways by utilities:

SECTION 1: DEFINITIONS

- a. Public right-of-way means only the areas of real property in which Kiowa County has a dedicated or acquired right-of-way interest in the real property. It shall include, but not be limited to, the area on, below or above the present and future roads, highways and/or public byways 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 non wire 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 County, or in any manner establishes a physical presence on, upon, in or over the right-of-way of the County, 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. Occupant shall not include (1) A public utility as defined by K.S.A. 66-104 and which regularly provides services to an end-user consumer; and (2) A rural water district as defined by K.S.A. 82a-619; nor (3) Any other entity exempted by state or federal law from this permitting requirement.

SECTION 2: HEALTH, SAFETY AND WELFARE

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 County.

SECTION 3: AUTHORIZATION FROM COUNTY REQUIRED

- a. No person, firm, corporation, association, utility or entity, shall enter upon the right-of-way of the County, or in any manner establish a physical presence on, upon, in or over the right-of-way of the County 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

without the express written permission of the County. The permission of the County may also be granted by agreement as the governing body determines best protects the public interest of the right-of-way.

- b. Nothing in this Resolution shall be interpreted as granting an occupant the authority to construct, maintain or operate any facility or related appurtenance on property owned by the County outside the public right-of-way.
- c. The County shall have the authority to prohibit the use or occupation of any portion of the 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. Reasonable public interests include, but are not limited to: (1) The prohibition is based upon the recommendation of the County Road and Bridge Supervisor, 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 County for requiring an alternative method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality; (3) The County 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.
- d. The County shall process each valid and administratively complete application for use of the public right-of-way within thirty (30) days.
- e. The County authorizes the Road and Bridge Supervisor and, in the alternative, the Road and Bridge administrative staff, to execute the permits on behalf of the County.

SECTION 4: 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 of the most current version of the Manual Of Uniform Traffic Control Devices (MUTCD) published by the U.S. Department of Transportation, Federal Highway Administration, which is incorporated herein by reference as if fully set forth herein.

SECTION 5: 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 notify the County Road and Bridge Department promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

SECTION 6: 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 County. If the occupant fails to make the repairs required by the County, the County may effect those repairs and charge the occupant the cost of those repairs.

SECTION 7: RELOCATION

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

SECTION 8: FEES

The following fees shall be assessed against occupants of the public right-of-way:

- a. Permit fee of \$100.00.
- b. Excavation fee of \$500.00 for each street or pavement cut or bore;
- c. Equipment in County right-of-way, such as portable pump, generator, light trailer \$200.00 per unit. Permit is good for thirty (30) days only. A new permit and fee shall be required for each thirty (30) day period. Permit terminates automatically upon relocation or removal of unit;
- d. Poly pipe in County right-of-way, fee shall be assessed at \$250.00 per mile, plus an additional \$300.00 for each culvert or bridge utilized which crosses a county road.
- e. 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 (see Section 6).
- f. Entrance culvert installation fee of \$100.00,
- g. Inspection fee of \$100.00. This fee is refundable at discretion of the Road and Bridge Supervisor.

SECTION 9: INSURANCE

Occupant shall provide a Certificate of Insurance for general liability and for auto liability naming Kiowa County as additional insured in the amount of \$1,000,000.00 per incident and \$4,000,000.00 total liability for each permit.

SECTION 10: INDEMNIFICATION

- a. Occupants shall indemnify and hold Kiowa County 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 Kiowa County, its officers, employees, contractors or subcontractors. If an Occupant and Kiowa County 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 Kiowa County 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 Kiowa County and Occupant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 11: CLAIM NOTIFICATION

The County and the Occupant shall promptly advise the other party in writing of any known claim or demand against the provider or the County related to or arising out of the occupant's activities in the public right-of-way.

SECTION 12: MISCELLANEOUS

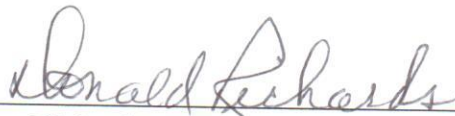
- a. Plans for utility installations are to be submitted with the permit request and shall include a description of the size and type of installation, the method of installation, and adequate drawings to indicate the location of the proposed facilities with respect to the right-of-way line and the edge of the road.
- b. Prior to construction, the County shall be given an opportunity to view and approve the planned location of proposed utility installations.
- c. A copy of the utility permit shall be kept by the Contractor on the job site while it is in progress and shall be exhibited upon request made by any county official.
- d. The occupant shall notify the County at least one business day prior to starting construction and shall also notify the County within one business day upon completion of construction.
- e. In the event of willful failure or neglect of the Occupant or its agents to perform and comply with the terms and conditions of this resolution and/or agreement of the parties, the County may revoke the permits previously approved and order Occupant to immediately remove any and all facilities at the Occupant's expense.
- f. The issuance of a permit does not in any way imply an easement on public or private property.

SECTION 12: PENALTIES

Any person, firm, corporation, association, utility or entity, or agent, contractor or subcontractor thereof, violating any provision of this Resolution shall be guilty of a Class C misdemeanor upon the first violation, and a Class B misdemeanor upon the second violation, and shall, upon conviction be subject to a maximum fine of \$500.00 per incident. Each day of violation shall constitute a separate and distinct offense.

Adopted this 17 day of September, 2012.

KIOWA COUNTY
BOARD OF COMMISSIONERS



Don Richards, Commissioner




Ron Freeman, Commissioner



John Unruh, Commissioner

ATTEST:



Carmen Renfrow, Kiowa County Clerk