

ORDINANCE NO. G-1117

AN ORDINANCE RELATING TO RIGHT OF WAY MANAGEMENT IN THE CITY OF JUNCTION CITY, KANSAS BY REPEALING SECTIONS 595.120, 595.130, AND 540.140 OF ARTICLE II, ENTITLED "STREETS AND SIDEWALKS REGULATIONS," OF CHAPTER 595, ENTITLED "MISCELLANEOUS PROVISIONS," OF TITLE V, ENTITLED "BUILDING AND CONSTRUCTION," OF THE CODE OF ORDINANCES OF THE CITY OF JUNCTION CITY, KANSAS; AND BY ADDING TO CHAPTER 595 OF TITLE V A NEW ARTICLE IV, ENTITLED "RIGHT OF WAY MANAGEMENT" CONTAINING NEW SECTIONS 595.510 THROUGH 595.630.

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

Section 1. Sections 595.120, 595.130 and 595.140 of Article II, Chapter 595, Title V of the Code of Ordinances of the City of Junction City, Kansas are hereby repealed.

Section 2. A new Article IV, containing new Sections 595.510 through 595.630 is hereby added to Article II, Chapter 595, Title V of the Code of Ordinances of the City of Junction City, Kansas to read as follows:

ARTICLE IV. RIGHT OF WAY MANAGEMENT

SECTION 595.510: DEFINITIONS

For purposes of this Article, the following words or terms shall have the meanings given herein:

APPLICANT: Any person or entity seeking a permit from the City to conduct work in the right-of-way.

CITY: City of Junction City.

ENGINEERING DESIGN STANDARDS OF THE CITY: Standards for performing work within the City's right-of-way promulgated by the City Engineer from time to time.

ENTITY: A corporation, partnership, limited liability company, association, firm and any governmental agency, authority, board, agency or department.

FACILITIES: Including, but not limited to, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennas, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, and other like equipment, fixtures and appurtenances used in connection with transmitting, supplying or

furnishing utility services, cable television, communications, signaling, electricity, water, natural gas, steam or other services or similar functions.

LIABILITY INSURANCE: An amount not less than the minimums as set by the City, to protect the City and in their capacity as such the governing body, officers, employees, and authorized agents thereof to the full extent indemnified hereunder from and against all claims by any person whatsoever for loss or damage from personal injury, death or property damage occasioned in any manner by the use of the right-of-way. This provision may be satisfied by supplying the City a letter of self-insurance and appropriate documentation verifying the applicant's ability to provide no less than the minimum coverage required.

OCCUPANT: Any person or entity that occupies, uses, or seeks to occupy or use, the right-of-way through facilities in the right-of-way. If the owner of any facilities leases, subleases, assigns or licenses the control or responsibility to any of those facilities to another person or entity, then the lessee, sublessee, assignee or licensee shall be deemed an occupant for that portion of such facilities.

PERSON: An individual or natural person.

RIGHT-OF-WAY: 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.

UTILITY SERVICE: The providing, transmitting, supplying or furnishing cable television, communications, signaling, electricity, water, natural gas, steam or other similar service.

SECTION 595.520: POLICY

- A. It is the policy of the City to authorize use of public right-of-way for the overall public health, safety and welfare of the City. Any use of the public right-of-way shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements.
- B. This Article also is designed to regulate excavations in the public right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize the right-of-way within the City.
- C. All users of the public right of way shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the users of the public right of way shall be subject to all technical specifications, design criteria, policies,

resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the public right-of-way.

- D. It shall be the intent of the City that all right-of-way necessitating access across paved streets and/ or rights-of-way shall be bored and jacked within the City, unless engineering conditions document otherwise.

SECTION 595.530: REGISTRATION

Unless otherwise exempt by the terms of this Article, each occupant engaged in the business of providing, transmitting, supplying or furnishing utility service originating or terminating within the City or owning or controlling facilities within the public right-of-way shall file an annual registration statement on a form provided by the City. Prior to commencing any work, no occupant may construct, install, repair, remove, relocate, or perform any other work on any facilities or any part thereof in any City right-of-way without first being registered with the City.

SECTION 595.540: ANNUAL REGISTRATION STATEMENT

For purposes of complying with the annual registration requirement set forth in Section 595.530, every occupant shall provide the following information related to their use of the public right-of-way:

1. Identity and legal status of registrant, including related affiliates that are or may conduct activities listed in section 595.430.
2. Name, address, telephone number, e-mail address and fax number of the contact person responsible for the accuracy of the registration statement. This person shall also serve as the registrant's agent and further be responsible for the distribution of any information pursuant to this Article to the appropriate person in the registrant's organization.
3. List of contact persons, including the name, address, telephone number, e-mail address and fax number for the following areas: right-of-way maintenance, right-of-way construction, administration, and legal.
4. Name, address, telephone number, e-mail address and fax number of the local representative of registrant or operations center who shall be available at all times to act on behalf of registrant in the event of an emergency.
5. Nonproprietary description of registrant's existing or proposed facilities within the City.
6. Description of utility service registrant intends to offer or provide or is currently offering or providing to any person or entity in the City.

7. Information sufficient to determine whether the registrant is subject to franchising under State law.
8. Information sufficient to determine whether the registrant has applied for and received any certificate of authority required by the Kansas Corporation Commission to provide utility services in the City.
9. Information sufficient to determine that the registrant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services in the City.
10. Such other information as may be required by the City reasonably related to the use of the public right-of-way.

Any material changes or modifications to the registration statement that affect the registrant's activities in the public right-of-way shall be submitted to the City within 30 days of such change or modification.

SECTION 595.550: PERMIT REQUIRED

- A. Any person or entity desiring to conduct work on any facilities in, along, across, under, or over public rights-of-way must first apply for and obtain a permit from the City in addition to any other permit or authorization to occupy public rights-of-way. If the facilities work must be done on an emergency basis, the person or entity conducting the work must notify the City at the first available opportunity and apply for any permits or authorizations from the City as soon as possible. Emergency work must comply with all applicable laws, rules and regulations.
- B. All applications or permits shall be submitted to the City Engineer or his or her designee on a form provided by the City with such information as required to allow the City Engineer to evaluate the application consistent with and necessary to accomplish the provisions of this Article.
- C. Each permit application shall be accompanied by the payment of the appropriate fee. Permit Fee shall be as set by resolution of the City Commission.
- D. The City Engineer shall review and cause the permit to be issued within 10 business days upon a showing that the applicant has met all the requirements of this Article. The City Engineer shall review the applications and base his or her decision in a competitively neutral and nondiscriminatory manner upon , but not limited to, the following:
 1. Submission of a complete application.
 2. Submission of the appropriate permit fee and bond.
 3. Designated project commencement and termination dates.
 4. Sufficient scheduling and coordination information.

5. Location and route of facilities in right-of-way.
6. Description of work to be done in right-of-way.
7. Proper restoration or protection of right-of-way.
8. Compliance with all applicable codes, rules and regulations.
9. Coordination plan with existing facilities for their removal or relation of affected facilities.
10. Applicant has properly registered pursuant to Section 595.530, if applicable.
11. Proof of liability insurance.
12. Other information as may be required to protect public health, safety and welfare.

E. The City Engineer may deny a permit request for any of the following reasons:

1. The applicant has failed to pay the permit fee for prior projects.
2. The applicant has failed to return the right-of-way to an acceptable condition under previous permits.
3. The work requested in the application will cause undue disruption to existing facilities.
4. The applicant has failed to provide all necessary permit application information.
5. The applicant is in violation of the provisions of this Article.
6. The applicant 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 diminution of service quality.
7. The specific portion of the public right-of-way for which the applicant seeks use and occupancy is environmentally sensitive as defined by state and federal law or lies within a previously designated historic district.
8. Any other reasons for which granting the permit would be detrimental to the public health, safety and welfare.

F. Prior to denial of a permit, the City shall provide the applicant with reasonable notice and opportunity to be heard and that said denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis.

SECTION 595.560: WORK REQUIREMENTS AND INSPECTIONS

A. The construction, operation, maintenance and repair of facilities located in the right-of-way shall be in accordance with applicable health, safety and construction codes as well as the Engineering Design Standards of the City.

- B. The applicant shall notify the City Engineer a minimum 2 business days in advance to schedule an inspection at the start any right-of-way work. Upon completion of all restoration activities the applicant shall schedule a closeout inspection with the same.
- C. The applicant shall provide all testing for materials and construction related activities as approved by the City Engineer, which shall certify the proper work completion within the right-of-way. The applicant shall pay all costs associated with such testing.
- D. Subject to the type of work within the right-of-way a two (2) year maintenance and guarantee bond maybe required. Such bond shall be provided upon satisfactory completion of the work.
- E. In addition to the required scheduled inspections, the City Engineer may chose to inspect the ongoing permitted work at any time to ensure that all requirements of this Article are being met by the applicant.
- F. At the time of any inspection, the City Engineer may order the immediate cessation of any work which poses a serious threat to health, safety or wellbeing of the public, or which does not conform to this Article or the conditions of the permit.
- G. All facilities shall be installed and located with due regard for minimizing interference with the rights and convenience of property owners, including the City.
- H. No applicant shall place or install facilities where they will damage or interfere with the use or operation of previously installed facilities, including but not limited to sidewalks, streets and portions or driveways or other pavement located within the public right-of-way, or obstruct or hinder other utilities.
- I. The applicant shall notify the office of the City Engineer upon completion of the work authorized by the permit.
- J. If available, applicants shall make a good faith attempt to co-locate their facilities with as many other utilities as possible so as to maximize the efficient allocation of space in the right-of-way. In instances where the City has placed conduit or ducting in the right-of-way, applicants shall install their faculties with the City conduit or ducting system, unless applicants can show a technological or other reasonable incompatibility preventing such placement.
- K. Any and all public rights-of-way damaged or disturbed during the facilities work shall be promptly and fully repaired or replaced to its full functional equivalence prior to be damaged or disturbed.

- L. Any contractor, agent, employee or subcontractor used for facilities work in the right-of-way must be properly licensed under the laws of the State and all applicable local ordinances and regulations. Each contractor, agent, employee or subcontractor shall be accountable for complying with the obligations hereunder to the same extent as the applicant. The applicant shall be ultimately responsible to ensure the contractor, agent, affiliate, employee or subcontractor fully complies with this Article and likely shall be responsible for all acts or omissions of such contractor, agent, affiliate, employee or subcontractor. Furthermore, upon written notice by the City, the applicant shall be responsible for promptly correcting acts or omissions by any contractor, agent, affiliate, employee or subcontractor.
- M. Within 90 days of completion of any facilities work in the right-of-way, applicant shall provide City with a complete set of "as built" drawings as to the format as described at the time of the permit issuance. Preliminary plans will satisfy this requirement so long as they accurately reflect the facilities work done.

SECTION 595.570: PERMIT FEES

- A. Every applicant for facilities work in the right-of-way, at the time of filing of the application, shall pay to the City a right-of-way permit fee, except that any State or local government shall be exempt from the permit application fee.
- B. The right-of-way permit fee shall be in such amount as approved by resolution by the City Commission
- C. Fees paid for a right-of-way permit which is subsequently revoked are not refundable.
- D. The City may also charge and collect all necessary repair and restoration costs.
- E. Stop work reinspection fees will be governed by other sections of these Codes.

SECTION 595.580: LIABILITY INSURANCE, PERFORMANCE AND MAINTENANCE BOND REQUIREMENTS

- A. Applicant shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas. The insurance shall protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, death or property damage to the extent caused or alleged to have been caused by the acts or omissions of the applicant, or its agents.
- B. The Applicant shall be required to post a performance and maintenance bond conditioned upon the applicant's performance of its obligations under this Article. The amount of the bond shall be **as adopted by resolution of the City Commission for permits and fees and no less than** the estimated cost of

restoring the right-of-way, whichever is greater. The term of the bond shall be for a term consistent with the term of the permit, plus two additional years, after satisfactory completion of the right-of-way work.

- C. In lieu of providing a performance and maintenance bond for work in the public right-of-way to be performed by a utility operating within the City, the utility may provide a blanket performance and maintenance bond in the minimum amount as adopted by resolution of the City Commission **and** covering all facilities work in the right-of-way for the calendar year. The form and substance of the performance bonds shall be subject to the approval of the City Engineer and the City Attorney. In the event the City Engineer determines that the individual performance bonds which would be required under Section B would for such utility would, in the aggregate, exceed required bond amount during the current calendar year, the City Engineer shall notify the applicant, and prior to doing any additional facilities work the applicant shall increase the amount of the performance and maintenance bond required by this Section C in the amount required by the City Engineer.
- D. A copy of the liability insurance certificate and performance and maintenance bond must be on file with the City Clerk.

SECTION 595.590: FAILURE TO RESTORE RIGHT-OF-WAY

If the applicant fails to restore the right-of-way in the manner and to the condition required by this Article, or any applicable City ordinance, rule or regulation, or fails to satisfactorily and timely complete all restoration required by the City, the City shall issue written notice of violation giving the applicant 10 days to restore the right-of-way in the manner and condition required by this Article. If the applicant fails to make the required repairs as required by the City, the City may complete said repairs and charge applicant and/ or owner the costs of said repairs. If the City incurs damages as a result of a violation by applicant of this Article, the City shall have a cause of action against applicant for violation of this Article and may recover damages, including the cost of repair and attorney's fees, against the applicant.

SECTION 595.600: RELOCATION OF FACILITIES.

- A. The City will attempt, in good faith, with as much notice as possible, prior to the need for the relocation, provide affected utilities of publicly funded City projects requiring relocation of facilities in the right-of-way. In any event, no later than 90 days from written notice by the City, any occupant with facilities in the right-of-way shall, at its own expense, temporarily, or permanently remove or relocate, change or alter the position of any facilities within the right-of-way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for:

1. Construction, repair, maintenance or installation of any City or other publicly funded project or improvement in or upon the public ways; and/or
 2. Operations of the City in and upon the right-of-way.
- B. Whenever possible, the relocation, change or alteration of any facilities shall be underground unless waived by the City Engineer. The City Engineer may waive this underground requirement for technical reasons or if underground placement would cause severe economic hardship to the occupant.
- C. Relocation of facilities must be completed no later than 90 days from the date written notice was provided to the occupant by the City. This time period may be extended by the City Engineer for good cause as demonstrated by the occupant.
- D. Any relocation of facilities at the City's request must comply with all City ordinances except that the occupant shall not be required to pay any permit fees.
- E. The City shall provide occupant written notice of the failure to properly remove or relocate facilities. After 14 days from said written notice and in the event an occupant fails to remove, relocate or otherwise rearrange any facilities, the City may, at its option and in addition to the imposition of any penalties or any other remedies available, undertake or cause to be undertaken, such necessary removal or relocation. Any damages suffered by the City or its contractors as a result of such occupant's failure to timely remove or relocate its facilities shall be borne by such provider. Future permit applications may not be granted to the same or related occupant until such time as those facilities are removed or relocated. The City shall have no liability for any damage caused by such removal or relocation and the occupant shall be liable to the City for all reasonable costs incurred by the City in such removal or relocation.

SECTION 595.610: ABANDONMENT/REMOVAL OF FACILITIES.

- A. An occupant who has determined to discontinue its operations in the City must either:
1. Provide information satisfactory to the City that the occupant's obligations for its facilities under this Chapter have been lawfully assumed by another occupant; or
 2. Submit to the City a proposal and instruments for dedication of its facilities to the City. If an occupant proceeds under this clause, the City may at its option;
 - a. Accept the dedication for all or a portion of the facilities; or
 - b. Require the occupant, at its own expense, to remove the facilities in the right-of-way at ground or aboveground level; or

- c. Require the occupant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities; or
 - d. Initiate statutory eminent domain proceedings.
- B. Any occupant who has abandoned facilities in any City right-of-way shall remove it immediately unless such removal would cause unnecessary disruption and destruction to existing facilities or the right-of-way. For purposes of this Chapter, "abandoned facilities" shall mean any facilities that have not been used for the purpose for which they were constructed over a continuous period of 12 months. The City will notify occupants in writing of their intentions to proceed with this Section. The occupant shall have 60 days to remove or otherwise remedy the situation to the satisfaction of the City. In addition to any other remedy available in law or equity, where facilities are abandoned, the City may either, take possession of the facilities, abate the facilities or require the occupant or the successor in interest to the occupant to remove the facilities at their expense.

SECTION 595.620: LIABILITY

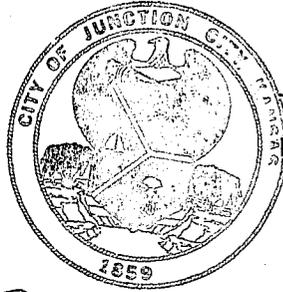
Every applicant and occupant shall assume all liability for work which it performs in the right of way and shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, liability and suits of every kind and nature, including bodily injury, death and property damage or other harm, to the extent that is if found by a court of competent jurisdiction to be caused by the negligent actions or omissions of the applicant or any agent, employee, contractor or subcontractor of applicant. The indemnity provided by this section does not apply to any liability resulting from the negligent actions or omissions of the City, its officers, employees, agents, contractors or subcontractors. If an applicant and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Kansas 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 subsection is solely for the benefit of the City and applicant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 595.630: PENALTY

Failure to comply with the provisions of this Article by any person or entity shall be deemed a public offense, punishable by up to \$500.00 per violation, per day. Each day a violation of this Article occurs shall constitute a separate public offense. Any penalty imposed by this provision shall be in addition to any other remedy at law or equity available to the City arising out of applicant's activities in the public right-of- way.

This Ordinance shall be in full force and effect from and after its publication once in the Junction City Daily Union.

PASSED AND ADOPTED THIS 10th DAY OF November, 2012.



Pat Landes

PAT LANDES, MAYOR

ATTEST:

Tyler Ficken

TYLER FICKEN, CITY CLERK