**RESOLUTION 2017-\_\_\_\_**

**Utility and Excavation Permits**

***A RESOLUTION ESTABLISHING A POLICY, INCLUDING FEES, FOR THE INSTALLATION OF UTILITIES AND EXCAVATIONS ON COUNTY ROADS.***

WHEREAS, \_\_\_\_\_\_\_\_\_ County, Kansas is an organized county government within Kansas with the power of home rule pursuant to K.S.A. 19-101 et seq.; and

WHEREAS, K.S.A. 68-545 requires persons to obtain written permission from the county engineer and township board to excavate in county road right-of-way; and

WHEREAS, K.S.A. 68-545 also makes it unlawful for any person to obstruct any portion of county road right-of-way without written permission from the county engineer and township board; and

WHEREAS, K.S.A. 68-115 authorizes the county engineer or township trustee to remove or cause to be removed all obstructions that may be found on county road right-of-way; and

WHEREAS, the Kansas legislature has expanded the use of county road right-of-way to allow use by certain types of public utilities subject to Kansas law; and

WHEREAS, Kansas law provides the use of county road right-of-way by public utilities and other persons is always subject and subordinate to the public health, safety and welfare, and shall not unreasonably obstruct the use of the public right-of-way; and

WHEREAS, past utility installations resulted in the obstruction of ditch maintenance on many miles of county roads; an

WHEREAS, unregulated excavation and installation of obstructions has increased road maintenance costs and has resulted in unsafe installations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF \_\_\_\_\_\_\_\_\_ COUNTY, KANSAS,

that the following regulations and rules shall be adopted and implemented to ensure compliance with K.S.A. 68-545 and to protect the public health, safety and welfare, minimize obstructions to maintenance work and the travelling public, as well as to prevent damage to public roads, structures, and signs.

**\_\_\_\_\_\_\_\_\_ COUNTY UTILITY AND EXCAVATION REGULATIONS**

I. APPLICABILITY

This resolution shall apply to the installation of utilities, pipeline crossings, excavation, and installation of any obstructions such as landscape items, retaining walls, mailboxes and driveways over, under, or across all county and township maintained public highways, roads, and streets outside the boundaries of incorporated cities, hereinafter called “Right-of-way”, within \_\_\_\_\_\_\_\_\_ County, Kansas. It shall be unlawful for any person to install any above ground or buried facilities, or perform any excavation or grading on the Right-of-way without receiving an appropriate permit, hereinafter called a “Permit,” from the county Director of Public Works, hereinafter called “Director”.

III. PERMITS AND NOTICES

1. Before any work on the Right-of-way for which a Permit is required under Section I of this resolution, the individual or company performing the work, hereinafter referred to as “Permittee”, shall obtain a Permit from the Director.
2. A Permittee shall obtain a permit form from the public works department and shall return the filled out form at least 15 calendar days prior to the anticipated date of beginning work. The Director may waive or shorten the 15-day application submission requirement for good cause shown. The Director will indicate in writing the approval/disapproval of the proposed work, and the Permit shall be granted or denied by the Director at least five days prior to the anticipated date of beginning work unless extenuating circumstances require a greater period of time to review the application. If the Director cannot approve the permit at least five days prior to the anticipated date of beginning work, the Permittee shall be notified that approval will not be granted by the proposed date and be given the reason for the delay. If the Permit is denied, the reason for denial shall be stated in writing.
3. The application form shall require the following information:
   1. A description of the work to be performed, the location of the work, and the approximate dates the work will be performed.
   2. In the event the County deems it necessary or proper to make any alteration or improvement along or upon the road or right-of-way, the Utility/Permittee agrees that upon notice being served, the Utility/Permittee will, within a reasonable time, adjust their facilities to clear the proposed road work at no charge to the County.
   3. The Contractor is responsible for the proper and safe execution of the work, and shall hold harmless County from liability for accidents and damages that may accrue to persons or property on account of this work.
   4. Requirement for a security deposit to ensure restoration of the right-of-way.
4. Required attachments to the permit.
   1. Certificate of Insurance from the contractor performing the work.
   2. Application Fee.
   3. Security.
   4. A map showing the location of the proposed work.
   5. Plans of the proposed work if required by the Director.

IV. FEES, SECURITY AND INSURANCE FOR PERMITS

1. **Application Fee.** A non-refundable application fee of $100.00 shall be charged for all Permits, except as follows: 1. Utility companies performing work by company employees. 2. Landowners performing their own work adjacent to their property.
2. **Security.** A cashiers check or surety bond shall be attached to the permit application, in the amounts as provided below:
   1. Utility Permit - $2,000 (waived for utility companies performing work by company employees)
   2. Road Crossing Permit: $2,000 for road cut, $500 for boring.
   3. Excavation Permit - $500 for driveway, $200 for other work.
3. **Insurance.** A certificate of insurance shall be attached to the permit application in the minimum amounts as provided below:
   1. General Liability - $500,000
   2. Auto Liability for bodily injury and property damage - $500,000

V. GENERAL CONSTRUCTION REQUIREMENTS

1. The Permittee shall comply with all adopted construction requirements and procedures.
   1. Utility Installation: Construction Requirements and Procedures for Installation of Utilities in the Public Right-of-way of Sample County, Kansas dated January 7, 2017.
   2. Excavation and Installation: Construction Requirements and Procedures for Excavation and Other Installations in the Public Right-of-way of Sample County, Kansas dated January 7, 2017.

VI. ADDITIONAL RULES AND REGULATIONS

The Director is authorized to prepare permit application and permit forms, instructions to applicants, and to establish and enforce additional rules and regulations as necessary for the orderly administration of this resolution.

VII. DAMAGES TO COUNTY PROPERTY

The Contractor shall be liable for all damage to the highway and other county property resulting from the work authorized by a Permit. Traffic signs and object markers removed or damaged by the Contractor shall be replaced or reset before dark of the same day the signs were removed or damaged unless arrangements have been made to have the public works department replace or reset the signs. At completion of the work the public works department will inspect the work for damage to county property. Damage that may affect traffic safety will be considered an emergency repair and may be immediately repaired by the public works department and the costs invoiced to the Permittee. For non-emergency damages to county property, the Permittee will be notified in writing and given 10 days to repair the damages. Failure to repair the damages within ten days shall be cause for the County to repair the damages. The public works department will then repair the damages and invoice the Permittee for all costs related to those repairs. Failure of the Permittee to pay the invoice amount within 14 days will be cause to enforce the bond. If the bond is forfeited, the Permittee shall be notified in writing. If the Permittee desires to contest bond forfeiture, the Permittee shall file a written protest with the Board of County Commissioners within 10 days of receiving the forfeiture notice and the Board of County Commissioners shall hear the Permittee’s protest within 14 business days of receiving the protest and shall issue a decision within five working days of the hearing. The Permitee shall only forfeit an amount on the bond sufficient to fully compensate the county for damages to its property by the Permittee. If damages exceed the amount of the bond the Board of County Commissioners may take legal action to recover the entire cost of repairing the damage caused by the Permittee.

SECTION VIII. VIOLATION AND PENALTY

It shall be unlawful for any person to install above ground or buried facilities, or perform any excavation or grading on the Right-of-way without obtaining a Permit, and any person that violates the provisions of this resolution, unless exempted as provided for herein, is guilty of a public offense of violating a County resolution as provided by K.S.A. 19-101 (d), and amendments thereto, and upon conviction of such violation shall be fined an amount not less than \_\_\_\_\_\_\_ dollars ($\_\_\_\_) nor more than \_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_) for each separate offense.[[1]](#endnote-1)

THIS RESOLUTION is an ordinary home rule resolution and shall become effective upon publication once in the official County newspaper.

BOARD OF COUNTY COMMISSIONERS

OF \_\_\_\_\_\_\_\_\_\_\_ COUNTY, KANSAS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ John Doe, Chairman

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ John Doe, Member

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ John Doe, Member

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John A Doe

County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John B Doe

County Counselor

1. Additional Section for Township Counties

   VI. TOWNSHIP MAINTAINED ROADS

   If the utility installation includes township maintained roads, the Director shall forward the permit application or otherwise communicate the information from the application to the Trustees of the affected townships. The Trustee(s) shall review the application and make a recommendation to the Director on concerns related to application. The Trustee(s) involvement is in an advisory role, only the Director may issue the Permit and establish additional conditions related to the move. [↑](#endnote-ref-1)