

ORDINANCE NO. 782

AN ORDINANCE REGULATING THE USE AND OCCUPANCY OF THE RIGHT-OF-WAY OF THE CITY OF WASHINGTON, KANSAS.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE
CITY OF WASHINGTON, KANSAS:**

Section 1. Purpose:

Right-of-ways and easements are essential to provide for quality streets, water, gas and electric utilities, street lighting, traffic control facilities and storm drainage for the citizens in the City of Washington. This ordinance enables the City of Washington to protect the health, safety, and welfare of the public with respect to these City owned streets, roads, alleys, and easements. Other franchise utilities such as telecommunications providers also use this public reserved space to provide services. This ordinance is adopted for proper management of public right-of-ways and easements granted to the City of Washington and their franchisees, and to protect all existing and future facilities within those areas. This ordinance does not preclude other related codes adopted by the city.

Private easements and service installations by franchisees across private property are exempt from this ordinance, however, in some cases are subject to other codes and regulations for the protection of the public and property.

Section 2. 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 communications or other nonwire communications 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 3. 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 optics 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 the City outside of the public right-of-way.
 - (c) City shall be notified prior to commencing any utility work being performed in the Right-of-Way.

Section 4. Health, Safety, and Welfare Regulations:

- (a) 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 5. Specific Portions of Right-of-Way Restricted:

- (a) Reserved:

Section 6. Compliance With Manual of Uniform Traffic Control Devices:

- (a) 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 Standards, Maintenance, Utility, and Incident Management Operations Part IV of the Manual of Uniform Traffic Control Devices (MUTCD), published by the U.S. Department of Transportation, Federal Highway Administration, most current edition, which is incorporated herein by reference as if fully set forth herein.

Section 7. Additional Requirements:

- (a) Rights of City-Liability-Pole Attachments:
 - (1) In the event an occupant fails to relocate its facilities from the public right-of-way pursuant to notification by the City as referenced in **Section 10**, Relocation, as set forth herein, in an emergency situation, the City retains the right to cut or move any and all facilities located within the right-of-way or easement of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. Unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any facility within the public right-of-way or easement as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the City.
 - (2) Electric pole attachments are prohibited by the City for all items with the exception of franchise facilities covered by a valid pole attachment agreement.

Pole attachment agreements may also be obtained by other local government agencies such as the school district. These agreements do not negate this section. All pole attachments shall meet minimum standards set forth by the City.

(b) **Kansas One-Call System-Notification Required:**

All City departments, contractors, and the general public shall contact the Kansas One-Call System and submit a locate request prior to any excavation work. All rules and requirements of the Kansas One-Call System shall be governed by the policy of that organization, however failure to obtain such locate request shall be a violation of this section.

Section 8. 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 9. 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 10. 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 11. Fees:

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

- (a) An annual permit fee in the amount of \$100.00;

- (b) An excavation fee for each street or pavement cut if the City assists with excavation, as per the City's current street opening policy;
- (c) An inspection fee in the amount of \$10.00, if an inspection is deemed necessary by the City Administrator;
- (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) Every occupant shall provide to the City a Certificate of Liability Insurance.

Section 12. 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 the 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 13. 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 14. Penalty Provision:

Absent any relevant non-compliance provisions within a separate related franchise agreement with any occupant, which said agreement(s) shall be incorporated by reference herein, any person, firm, corporation, association, utility, 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.

Passed by the Governing Body of the City of Washington, Kansas, on the 2nd day of March, 2015.

Ryan W. Kern, Mayor

ATTEST:

Denise M. Powell, City Clerk