

RESOLUTION NO. 16-22

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF  
DOUGLAS COUNTY, KANSAS AMENDING DOUGLAS COUNTY CODE  
SECTIONS 9-107 THRU 9-112

**WHEREAS**, Chapter 9 of the Douglas County Code deals with Public Works; and

**WHEREAS**, Sections 9-107 thru 9-112 of Chapter 9 of the Douglas County Code deal with the placement of public utilities in the right-of-way; and

**WHEREAS**, it has been determined by the Board that there is a need to amend Sections 9-107 thru 9-112 of the Douglas County Code;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS AS FOLLOWS:

SECTION 1. Adoption of Regulations on Construction Work in the Right-of-Way. The following is adopted as part of Chapter 9 (Public Works), Article 1 (General Provisions) of the Douglas County Code:

**CHAPTER 9. PUBLIC WORKS**  
**ARTICLE 1. GENERAL PROVISIONS**

**9-107 CONSTRUCTION WORK WITHIN THE PUBLIC RIGHT-OF-WAY.**

**9-107-1 DEFINITIONS.**

- a. "Construction work" as used in this article means any of the following activities:
- (1) Excavation, fill, grading, paving or other modification of the ground surface;
  - (2) Construction of any post, pole, sign, wall, fence, gate, structure, enclosure or other fixed object;
  - (3) Construction of any footing, foundation, vault, manhole or other buried structure;
  - (4) Installation of any pipe, pipeline, conduit, cable, wire, antenna, equipment or related fixtures; or
  - (5) Planting of trees or other vegetation that would create a physical or visual barrier; or
  - (6) Removal of trees or tree limbs or other vegetation by physical or chemical means to accommodate public utilities.

- b. "Person" means any individual, association, firm, partnership, corporation, public utility or private entity.
- c. "Public right-of-way" means the area of real property in which the County has a dedicated or acquired right-of-way interest for the purpose of constructing and maintaining travel lanes, roadside ditches, culverts, bridges, signage and other features of a public road.
- d. "Public utility" means those utilities identified in K.S.A. 66-104, and amendments thereto.
- e. "Public utility facility" or "facility" means a pipe, pipeline, conduit, cable, wire, vault, manhole, enclosure, structure, post, pole, sign, marker, antenna, fixture, equipment or any other object installed and maintained by a public utility.

**9-107-2 WRITTEN PERMISSION REQUIRED.**

- a. It shall be unlawful for any person to do any construction work within, above or below the public right-of-way of a road or bridge maintained by the county, without first obtaining written permission from the director of public works.
- b. It shall be unlawful for any person to do any construction work within, above or below the public right-of-way of a road maintained by a township, without first obtaining written permission from the director of public works or township trustee.
- c. The owner of frontage along a public right-of-way may plant grass seed, mow, trim, and apply appropriate weed control practices as recommended by the Noxious Weed Director or Kansas Department of Agriculture within that public right-of-way without obtaining the written permission in (a) or (b).
- d. The owner of an existing public utility facility within the public right-of-way may perform maintenance work on that facility without obtaining the written permission in (a) or (b) provided that the maintenance work does not include construction work as defined in 9-107-1.
- e. The director of public works may develop minimum standards for allowable construction within the public right-of-way. The director of public works and the township trustees shall apply those minimum standards when reviewing work within the public right-of-way, to ensure the continued integrity and safety of roads, culverts and bridges within the county. The director of public works or township trustee may require

more stringent standards when, in their opinion, such more stringent standards are necessary to ensure the continued integrity and safety of roads, culverts and bridges within the county.

**9-107-3 ENTRANCE PERMITS.** When a property owner proposes to construct or improve an entrance within or connecting to the public right-of-way, the approval required in 9-107-2 shall be in the form of an entrance permit. The director of public works shall develop standards and forms as necessary for the issuance of entrance permits. The applicant shall pay a \$75 permit application fee with each new application to construct or improve an entrance.

**9-107-4 UTILITY PERMITS.** When a public utility or its contractor proposes to construct, install, improve or modify facilities, or remove trees or limbs within, above or below the public right-of-way, the approval required in 9-107-2 shall be in the form of a utility permit. The director of public works shall develop standards and forms as necessary for the issuance of utility permits. A utility permit shall only be issued to a public utility if the applicant has the legal authority to occupy and use the public right-of-way for the purposes identified in the application for the permit. The public utility will reimburse Douglas County for fees for any consulting services needed in reviewing and approving the application or inspecting the installation, as determined necessary by the director of public works.

**9-107-5 INSURANCE REQUIRED.** Any person occupying the public right-of-way for the purpose of doing construction work or for the purpose of maintaining an existing public utility facility shall do so only after obtaining the following minimum insurance coverage to be in effect for the duration of the work:

- a. Commercial general liability insurance for a combined single limit of a minimum amount of \$500,000 for bodily injury and property damage;
- b. Automobile liability insurance for a combined single limit of a minimum amount of \$500,000 for bodily injury and property damage that covers owned, hired, and non-owned vehicles; and
- c. Obtain insurance only from insurers authorized to transact insurance business in Kansas as an authorized insurer.
- d. For utility attachments to bridges or other structures, the minimum insurance coverage shall equal the replacement value of the bridge or structure, as determined by the director of public works.

**9-107-6 TRAFFIC CONTROL REQUIRED.** Any person occupying the public right-of-way for the purpose of doing construction work or for the purpose of maintaining an existing public or private utility facility shall do so only after providing, erecting and maintaining all traffic control devices necessary to protect the public and workers. All traffic control devices must conform to the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) in terms of quality,

quantity and placement. Construction work within the public right-of-way is prohibited unless and until the required traffic control is in place.

**9-107-7 PERMIT REVOCATION.** The director of public works or township trustee may revoke the permit and remove any work performed for failure to complete a project as described in the Permit or failure to comply with established policy. The Utility Company or right-of-way occupant shall reimburse the director of public works or township trustee, as appropriate, for any cost incurred by the county and/or township to restore the right-of-way. The director of public works or township trustee will not authorize any other permits for the Utility Company or right-of-way occupant until they have either reimbursed the county and/or township or restored the right-of-way.

**9-107-8 PENALTY.** Any person that is determined by the district court to have failed to comply with the provisions of this article shall be subject to the injunction provisions of K.S.A. 19-101d, and amendments thereto. Any person that is determined by the district court to have committed a second violation of this article within 12 months of a previous violation shall be subject to the maximum penalties prescribed for conviction of a Class C misdemeanor.

**9-108 POLICY ON PLACEMENT OF PUBLIC UTILITIES WITHIN PUBLIC RIGHT-OF-WAY.**

**9-108-1 REMOVAL OR RELOCATION.** Any utility permit issued pursuant to this article shall be conditioned upon the agreement of the applicant to move the permitted facility at no expense to Douglas County or any township thereof in the event of a road improvement in the area within the right-of-way where the applicant's facility is located. Such agreement by the applicant shall be without reservation. The applicant shall agree to move the facility within 90 days after notification by the county or township, or four weeks prior to construction project bid letting, whichever is later.

**9-108-2 NOTICE.** The public utility or its subcontractor(s) shall notify the director of public works and/or township trustee when permitted work commences and when the work is completed.

**9-108-2 LIABILITY.**

- a. The public utility assumes all risk and liability for accidents and damages that may occur to persons or property from work performed under a utility permit.
- b. Douglas County shall not be liable for damage to any utility not installed in the location authorized by any permit or agreement issued pursuant to this policy.

**9-108-3 UTILITY CORRIDOR.** Public utility facilities paralleling the road shall be located as close to the right-of-way line as possible. Underground facilities should be located within ten feet of the right-of-way line. Overhead facilities should be located within three feet of the right-of-way line.

**9-108-4 CLEAR ZONE LIMITATIONS.** Above ground public utility facilities shall not be located on the ground within the roadside clear zone available for errant vehicles, unless otherwise approved by the director of public works. The appropriate clear zone is site specific based on speed, traffic count, and cross section at the location. The director of public works shall determine appropriate clear zone dimension standards and/or appropriate clear zone dimensions at a particular location.

**9-108-5 VERTICAL CLEARANCE.** The depth of cover over buried public utility facilities and the vertical clearance under overhead public utility facilities shall comply with standards determined by the director of public works.

**9-108-6 MAXIMUM HEIGHT.** The maximum height of any public utility facility shall be 65 feet.

**9-108-7 MAXIMUM WIDTH.**

- a. Measured perpendicular to the road, the combined width of all of the underground facilities owned by one public utility shall not exceed five feet, except where necessary to cross the road. Road crossings shall be aligned as close to perpendicular as possible.
- b. Measured parallel to the road and at the ground surface, the combined width of all of the above ground facilities owned by one public utility shall not exceed five feet within any 50 foot length of road.
- c. Measured perpendicular to the road and at the ground surface, the maximum width of any above ground facility shall not exceed three feet.

**9-108-8 COMPLIANCE.** Any utility permit issued pursuant to this article shall be conditioned upon the agreement of the applicant to remove or relocate the permitted facility at no expense to Douglas County or any township thereof in the event the facility does not comply with the size or location requirements of the approved permit.

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SECTION 2. Repeal of Prior Provisions. CHAPTER 9, ARTICLE 1. GENERAL PROVISIONS, Sections 9-107 thru 9-112, as existing in the County Code before adoption of this Resolution, are hereby repealed. These sections are renumbered and amended as set forth above.

SECTION 3. Effective Date. This is a Resolution and shall take effect and be in force from and after its publication once in the official county newspaper.

ADOPTED this 21st day of September, 2016.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

*James E. Flory*  
James E. Flory, Chair

*Mike Gaughan*  
Mike Gaughan, Vice-Chair

*Nancy Thellman*  
Nancy Thellman, Member

ATTEST:

*Jameson D. Shew*  
Jameson D. Shew, County Clerk

