

RESOLUTION NO. 19-2016

**A RESOLUTION ESTABLISHING RIGHT-OF-WAY POLICY FOR  
CHEROKEE COUNTY, KANSAS**

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
CHEROKEE COUNTY, KANSAS, THAT THE FOLLOWING RESOLUTION BE  
ADOPTED:**

**SECTION 1. Definitions.** (a) "Public right-of-way" means only the area of real property in which the County 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 telecommunications or other nonwire 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, constructing, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto.

**SECTION 2. 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, constructing, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto without the express written permission of the County. The permission of the County 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 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 of the public right-of-way.

(c) The County shall process each valid and administratively complete application for use of the right-of-way within 30 days.

**SECTION 3. Health, Safety, and Welfare Regulations.** 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 4. Specific Portions of Right-of-Way Restricted.** (a) The County hereby has the authority to prohibit the use or occupation of specific portions of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare, exercised in a competitively neutral manner including:

1. prohibition based upon recommendation of the County engineer;
2. the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the County for requiring installation expenses 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; or
4. the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

**SECTION 5. 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 Operations Part IV of the Manual of Uniform Traffic Control Devices (MUTCD), published by the U.S. Department of Transportation, Federal Highway Administration, 2009 Edition, which is incorporated herein by reference as if fully set forth herein.

**SECTION 6. Additional Requirements.** The County may impose additional requirements of right-of-way occupants excluding the following:

1. requirements that particular business offices or other telecommunications facilities be located in the County;
2. requirements for filing applications, reports and documents that are not reasonably related to the use of a public right-of-way;
3. requirements for County approval of transfers of ownership or control of the business or assets of a provider's business, except that the County may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and
4. requirements concerning the provision or quality of customer services, facilities, equipment or goods in-kind for use by the County, political subdivision or any other provider or public utility.

**SECTION 7. 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 County promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

**SECTION 8. 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 9. 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 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 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 such occupant.

**SECTION 10. Fees.** The following fees shall be assessed against occupants of the public right-of-way:

- (a) A permit fee of: \$25.00 ;
- (b) An excavation fee of: \$100.00 for each road, street or pavement cut;
- (c) An inspection fee of: \$25.00, plus \$25.00 for each road, street or pavement cut;
- (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) A performance bond in a form acceptable to the County from a surety licensed to conduct surety business in the State of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

**SECTION 11. Indemnity.** (a) Occupants shall indemnify and hold harmless the County and its officers and employees 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 the County, its officers, employees, contractors or subcontractors. If an occupant and the 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 the County under state law and without waiving any legal defenses of the parties under state or federal law.

(c) This section is solely for the benefit of the County and occupant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

**SECTION 12. Claim Notification.** An occupant shall promptly advise the County 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 a public right-of-way.

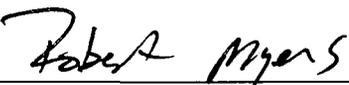
**SECTION 13. Penalty Provision.** Any person, firm, corporation, association, utility or entity or agent, contractor or subcontractor thereof, violating any provision of this article shall be guilty of a misdemeanor offense and shall, upon conviction, be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense.

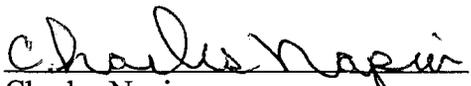
**SECTION 14. PUBLICATION.** The County Clerk shall cause this resolution to be published in the official County Newspaper.

**SECTION 15. CONFLICT.** All resolutions, County policies or parts thereof, in conflict herewith are hereby expressly repealed insofar and they conflict herewith.

**SECTION 16. EFFECTIVE DATE.** This resolution shall be effective upon passage.

**PASSED AND APPROVED** this 18<sup>th</sup> day of July, 2016, by the Board of County Commissioners of Cherokee County, Kansas.

  
\_\_\_\_\_  
Robert Myers, Chairman  
Cherokee County Commissioner

  
\_\_\_\_\_  
Charles Napier  
Cherokee County Commissioner

  
\_\_\_\_\_  
Patrick Collins  
Cherokee County Commissioner

ATTEST:

  
\_\_\_\_\_  
Rodney D. Edmondson, County Clerk

SEAL