

ORDINANCE NO. 469

AN ORDINANCE RELATING TO MANAGING THE USE AND OCCUPANCY OF THE PUBLIC RIGHT-OF-WAY (R-O-W) FOR THE CITY OF SUBLETTE, KANSAS.

WHEREAS, the City of Sublette, Kansas is a municipal corporation organized and existing under the laws of the State of Kansas, and authorized by the Kansas Constitution and State Statute to determine its local affairs and to regulate the activities and installations of private entities on, in, above and under the City's public right-of-way; and

WHEREAS, the governing body of the City of Sublette, Kansas, finds that the public health, safety, welfare and convenience of the City and its residents requires that it regulate the installation, construction, maintenance and operation of lines, conduits, wires, fiber optic cables, pipes, pipelines, poles, towers, vaults, appliances, wireless communications facilities, or related facilities on, in above and under the public right-of-way within the City;

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

SECTION 1. PURPOSE. The purpose of this ordinance is to properly protect the public health, safety, welfare and convenience of the City and its residents as it pertains to the installation and maintenance of various items on, in, above and under the public right-of-way within the City.

SECTION 2. That the City Clerk will file this ordinance in the Office of the Register of Deeds upon its passage and publication.

SECTION 3. That this Ordinance shall be effective upon its passage and adoption by the Governing Body of the City of Sublette, Kansas, and after its publication in the official City newspaper.

SECTION 4. DEFINITIONS. For purposes of this ordinance, the following words and phrases shall have the meaning given herein, words and phrases not herein defined shall be given their normal meaning and interpretation:

- a. **Applicant-** means any person or entity requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- b. **Construct-** means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- c. **Facilities-** Any tangible thing located in any right-of-way including, but not limited to, lines, conduits, wires, fiber optic wires, cables, pipelines, poles, towers, vaults or appliances.
- d. **Excavate-** means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
- e. **Right-of-way-** sometimes abbreviated as **R/W** or **ROW**. Means 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, or boulevards dedicated or acquired as right-of-way.

- f. **Right-of-way permit**- means the authorization to perform any work or excavation regulated by this ordinance within a right-of-way.

SECTION 5. PERMIT REQUIREMENT.

- a. Except as otherwise provided in this article, no person may construct in any right-of-way without first having obtained the appropriate right-of-way permit.
- b. A permit is valid only for the dates and areas of right-of-way in the permit issued. Unless the permittee:
 - 1) Makes an extended application for right-of-way permit before expiration of the initial permit; and
 - 2) A new right-of-way permit is granted.

However, if no work is initiated within sixty (60) days of obtaining a permit, the permit is tendered invalid.

- c. The authority of a permittee to use and occupy the right-of-way shall always be subject to and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city.
- d. At the discretion of the City of Sublette Superintendent, the permittee may be required to notify the occupants of all properties within two hundred feet (200') of the excavation prior to the commencement of such excavation. Door hangers shall be sufficient to satisfy such notification requirement.

SECTION 6. PERMIT APPLICATIONS.

- a. Any individual or entity desiring to perform any type of construction within the right-of-way shall apply for an application for Right of Way Permit to the City of Sublette Superintendent.
- b. All permit applications shall include the requirements of this article, specifically including, but not limited to, the following.
 - 1) Each applicant's name, Kansas's one-call registration certificate number, mailing address, e-mail address and telephone numbers.
 - 2) A completed permit application form, including but not limited to all required attachments including Traffic control plans and site plans showing the location and area of proposed project and location of all existing and proposed utilities(facilities) at such location; and
 - 3) Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity.
 - 4) Information sufficient to determine whether the right-of-way user is subject to franchising by Kansas law, **KCC** or other governmental entity.
 - 5) Information sufficient to determine that the right-of-way user has applied for and received any permit or other approvals required by any other entity.
- c. Insurance.
 - 1.) Verifying that an insurance policy has been issued to the applicant by an insurance company licensed to do business in the state of Kansas or a form of self-insurance acceptable to the city. The insurance shall be in a minimum amount as stated in the application or in a minimum amount of \$1,000,000.00, whichever is less.

- 2.) The city may require a copy of a franchise, license, or user agreement with the City named as an additional insured.
- d. The City shall create and implement an application for right of way permit incorporating the requirements of this ordinance.

SECTION 7. PERMIT FEES AND PENALTIES.

- a.) There is set fee of \$50.00 for the application and obtainment of a ROW permit.
- b.) In the event that an individual or entity commences any type of work in a ROW without the permit as discussed herein, then the individual may be cited for a violation of this ordinance. The punishment shall not exceed a \$500 fine and/or up to a maximum of thirty (30) days in jail, plus applicable court costs. Every day the violation continues shall be treated as a separate and distinct offense. Any violation of this ordinance shall be punishable likewise.
- c.) In lieu of the issuance of a citation as contemplated in Section 7(b), the individual may elect to cease operations at once and obtain the proper permit. In the event the individual elects to obtain a permit, then said permit shall be at a cost of two hundred dollars (\$200).

SECTION 8. ISSUANCE OF PERMIT.

- a. If the City determines that the applicant has satisfied the requirements of this article, the City shall issue a right-of-way permit.
- b. The work to be done under a right-of-way permit must be completed within the dates specified in the permit.
- c. The City may impose reasonable conditions upon the issuance of the permittee to protect the public health, safety or welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public, including notification to property owners. Such conditions may include but not be limited to the following: dates of work being done, hours of operation, number of individuals on scene, etc.
- d. If work is being done by the right-of-way user for or under contract with another right-of-way user, both such right-of-way users shall be jointly and severally liable for all damages, potential penalties, obligations, and warranties.

SECTION 9. DENIAL OF PERMIT

- a. The City may deny a permit or prohibit the use or occupancy of specific portion of the right-of-way to protect the public health, safety or welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, and by considerations relating to the public health, safety and welfare. The City may consider one or more of the following factors including but not limited to:
 - 1) The extent to which the right-of-way space where the permit is sought is available.
 - 2) The competing demands for particular space in the right-of-way.
 - 3) The availability of other portions of the right-of-way or in other right-of-way for facilities of the applicant.
 - 4) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way.

- 5) The degree of compliance of the applicant with the terms and conditions of this article, and other applicable ordinances and regulations
- 6) The degree of disruption to surrounding residents, businesses that will result from the use of that part of right-of-way.
- 7) The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of public served by the construction in the right-of-way.

SECTION 10. RIGHT OF WAY RESTORATION.

- a. The permittee must restore the general area of the work, including all disturbed landscaping, planting and improvement materials where any ground surface was disturbed, including the paving and its foundation, per the construction standards described in this article. Prior to such work the permittee shall allow for a final inspection to be done by the City superintendent.
 - 1) Restoration in the right-of-way from digging, trenching or excavation shall be water packed with eight inch (8") lifts bringing it to current or better than current standards.
- b. Every permittee causing the City to make restoration of the right-of-way surfaces must pay any estimated fees prior to commencement of work.
- c. In the event permittee causes damage of any kind to any existing utilities, then permittee shall be responsible for all costs for the restoration of said utilities.
- d. Upon completion and approval of compliance of restoration by the City, the permittee shall immediately prepare and provide an as built map which depicts the final project.

SECTION 11. PERMIT NOT REQUIRED UNDER CERTAIN CIRCUMSTANCES.

- a. An individual or entity working on the surface in a public right-of-way within the City of Sublette does not need to obtain a permit as contained in this ordinance. Surface shall be limited in scope to include any dirt work done not to exceed twelve (12) inches in depth from ground level.

PASSED AND APPROVED by the Governing Body of the City of Sublette, Kansas, and signed by the Mayor this 2nd day of October 2023.

ATTEST:



Lawrence Hoerman, Mayor



Shayla Makings, City Clerk