

RESOLUTION NO. 20-2024

**A RESOLUTION BY THE CHEROKEE COUNTY, KANSAS BOARD OF
COMMISSIONERS
REGULATING COUNTY RIGHT-OF-WAY USAGE**

WHEREAS the Cherokee County, Kansas Board of County Commissioners is authorized to regulate activities within the County Public Right-of-Way and to authorize and require permits and assess fees in connection with such regulations; and

WHEREAS the Board has determined it is necessary, desirable, and in the best interest of the County to establish a permitting process for the general health, welfare, and safety of the public and to require fees for certain services when such services are provided by the County.

NOW THEREFORE the Cherokee County Board of Commissioners hereby resolves:

Section 1 – Definitions

- (a) "Applicant" means any person, firm, corporation, association, utility, entity, or agent thereof seeking permission of the County to use or occupy any Public Right-of-Way.
- (b) "Public Right-of-Way" means 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 the right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (c) "Occupant" means any person, firm, corporation, association, utility, entity, or agent thereof which enters upon any Public Right-of-Way, or in any manner establishes a physical presence on, upon, in, or over such right-of-way for the purpose of engaging in Right-of-Way Work.
- (d) "Work" means installing, constructing, maintaining, or operating any line, conduit, wire, fiber optic wire, cable, pipe, pipeline, pole, tower, vault, appliance, or related facility or appurtenance thereto.

Section 2 – County Authorization Required

- (a) No Occupant shall enter upon any Public Right-of-Way for the purpose of performing Work without first obtaining a right-of-way work permit or other written permission by the County.
- (b) The County may authorize Work in a Public Right-of-Way by issuing a written right-of-way work permit or by such other agreement as the County determines best protects the public interest.

Section 3 – Application

- (a) **Form.** All applications to perform work in a public right-of-way shall be on a form prepared and provided by the Cherokee County Road & Bridge Department. Completed applications shall be submitted to the Cherokee County Road & Bridge Department for review.
- (b) **Plan.** Each application shall include a detailed plan of the work to be performed. Such plan shall provide sufficient detail for the County to assess the impact the proposed work may have on any public right-of-way, public roadway, and/or surrounding properties.
- (c) **Fees.** Each application shall include payment of the applicable fees as stated herein.
- (d) **Bond.** Each application shall provide 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 and repair of any damage.

Section 4 – Health, Safety, and Welfare Regulations.

The authority of any Occupant to use and occupy any Public Right-of-Way shall always be subject and subordinate to public health, safety, and welfare requirements and regulations of the County.

Section 5 – Specific Portions of Right-of-Way Restricted

- (a) The County may prohibit the use or occupation of a specific portion of public right-of-way by an Applicant or Occupant due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:
 - 1. The prohibition is based upon a recommendation of the County engineer, is related to public health, safety, and welfare;