

(Summary Published in the _____
on the ____ day of _____, 2016.)

THE CITY OF ANDALE, KANSAS

ORDINANCE NO. 16-2

AN ORDINANCE REGULATING THE PUBLIC LANDS
AND THE RIGHTS-OF-WAY WITHIN THE
CORPORATE LIMITS OF THE CITY OF ANDALE,
KANSAS BY ESTABLISHING RIGHT-OF-WAY
MAINTENANCE POLICY AND PROCEDURES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDALE,
KANSAS:

Section 1. Incorporating Policy and Procedures

There is hereby incorporated by reference for the purpose of regulating the public lands and the rights-of-way within the corporate limits of the City of Andale, Kansas, a document entitled "The City of Andale, Kansas Right-of-Way Maintenance Policy and Procedures." No fewer than three (3) copies of said document shall be marked "Official Copy as adopted by Ordinance No. _____," and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. Prohibited Acts

It is unlawful for any individual, proprietorship, partnership, company, corporation, municipal corporation or other entity to construct, erect, lay or otherwise place any pipeline, transmission line, main, pole, tower, sign or other structure above, within, along, across, under or over any public land or right-of-way within the corporate limits of the City of Andale, Kansas in violation of the provisions of the Right-of-Way Maintenance Policy And Procedures established pursuant to Section 1 of this Ordinance.

Section 3. Penalty.

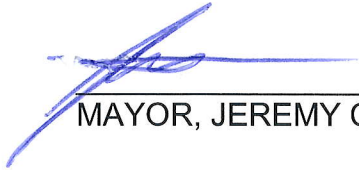
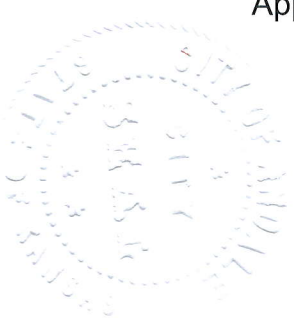
Any person, proprietorship, partnership, company, corporation, municipal corporation or other entity violating any of the provisions of the Right-of-Way Maintenance Policy And Procedures established pursuant to Section 1 of this Ordinance shall, upon conviction thereof by the Municipal Court of the City of Andale, Kansas, be fined in an amount not to exceed five hundred dollars plus court costs. Each day constitutes a separate violation.

Section 4. Effective Date

This Ordinance shall take effect and be in force from and after its publication in the official city newspaper.

Adopted by the City Council this 28th day of March, 2016.

Approved by the Mayor this 31 day of March, 2016.



MAYOR, JEREMY CAWOOD

SEAL

ATTEST:



CITY CLERK, PATTY HEIN

THE CITY OF ANDALE, KANSAS
RIGHT-OF-WAY MAINTENANCE POLICY AND PROCEDURES
Official Copy as adopted by Ordinance No. 16-2

Section 1. Policy

It is the policy of the City of Andale, Kansas, in discharge of the duties as trustee of the public right-of-way and for the overall public health, safety and welfare of the City, to establish rules and regulations concerning management of the public right-of-way.

The authority of an occupant to use and occupy the public right-of-way shall always be subject and subordinate to the public health, safety, and welfare requirements and regulations of the City. Every occupant shall comply with all laws, rules, and regulations governing the use of public right-of-way.

Section 2. Registration

A. Unless otherwise exempt by the terms of these Policy and Procedures, each occupant engaged in providing, transmitting, supplying or furnishing utility service originating, running through or terminating within the City or owning or controlling facilities within the public right-of-way shall file an annual registration statement on a form provided by the City.

Prior to commencing any work, no occupant may construct, install, repair, remove, relocate, or perform any other work on any facilities or any part thereof in any City right-of-way without first being registered with the City of Andale.

B. The registration requirement shall not apply to planting or maintaining landscaping in the right-of-way, construction or repair of sidewalks, installation of street signs, news-racks, temporary signs and public pay phones.

C. The registration requirement shall apply to any occupant having exempt facilities referenced above if that occupant also has nonexempt facilities elsewhere in the public right-of-way.

Section 3. Annual Registration Statement

A. For purposes of complying with the annual registration requirement set forth above, every occupant shall provide the following information related to their use of the public right-of-way:

1. Identity and legal status of registrant, including related affiliates that are or may conduct activities listed in Section 2.

2. Name, address, telephone number, e-mail address and fax number of the contact person responsible for the accuracy of the registration statement. This person shall also serve as the registrant's agent and further be responsible for the distribution of any information pursuant to these Policy and Procedures to the appropriate person in the registrant's organization.

3. List of contact persons, including the name, address, telephone number, e-mail address and fax number for the following areas: right-of-way maintenance, right-of-way construction, and administration.

4. Name, address, telephone number, e-mail address and fax number of the local representative of registrant or operations center who shall be available at all times to act on behalf of registrant in the event of an emergency.

5. Description of registrant's existing or proposed facilities within the City of Andale.

6. Description of utility service registrant intends to offer or provide or is currently offering or providing to any person or entity in the City of Andale.

7. Information sufficient to determine whether the registrant is subject to franchising under State and/or federal law, including an explanation of any existing franchise and any franchise fees payable to the City of Andale.

8. Information sufficient to determine whether the registrant needs to/has applied for and received any certificate of authority required by the Kansas Corporation Commission to provide utility services in the City of Andale.

9. Information sufficient to determine that the registrant needs to/has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services in the City of Andale.

10. Such other information as may be required by the City of Andale which is reasonably related to the use of the public right-of-way. Any material changes or modifications to the registration statement that affect the registrant's activities in the public right-of-way shall be submitted to the City within 30-days of such change or modification.

Section 4. Permit Required

Any person or entity desiring to conduct work on any facilities above, within, along, across, under or over public rights-of-way, including the construction or repair of sidewalks, must first apply for and obtain a permit from the City of Andale in addition to any other permit or authorization to occupy public rights-of-way. If the facilities work must be done on an emergency basis, the

person or entity conducting the work must notify the City of Andale at the first available opportunity and apply for any permits or authorizations from the City within two (2) business days. Emergency work must comply with all applicable laws, rules, and regulations.

A. All applications for permits shall be submitted to the City Clerk on a form provided by the City with such information as required to allow the City to evaluate the application consistent with and necessary to accomplish the provisions of these Policy and Procedures.

B. Each permit application shall be accompanied by the payment of the appropriate fee.

C. The Mayor shall review and cause the permit to be issued within ten (10) business days upon a showing that the applicant has met all the requirements of these Policy and Procedures. The Mayor shall review the applications and his decision shall be based upon, but not limited to, the following:

1. Submission of a complete application.
2. Submission of the appropriate permit fee and bond.
3. Designated project commencement and termination dates.
4. Sufficient scheduling and coordination information.
5. Location and route of all facilities in the right-of-way.
6. Description of work to be done in right-of-way.
7. Proper restoration or protection of the right-of-way.
8. Compliance with all applicable codes, rules and regulations.
9. Coordination plan with existing facilities for their removal or relation of affected facilities.
10. Applicant has properly registered pursuant to Section 2 of these Policy and Procedures.
11. Proof of liability insurance.
12. Other information as required to protect public health, safety and welfare.

D. The Mayor may deny a permit request for any of the following reasons:

1. The applicant has failed to pay the permit fee for prior projects.
2. The applicant has failed to return the right-of-way to an acceptable condition under previous permits.
3. The work requested in the permit application will cause undue disruption to existing facilities.
4. The applicant has failed to provide all necessary permit application information.
5. The applicant is in violation of the provisions of these Policy and Procedures.
6. The specific portion of the public right of way for which the applicant seeks use and occupancy is environmentally sensitive as defined by state and federal law or lies within a previously designated historic district as defined by local, state, or federal law.
7. Any other reason for which granting of the permit would be detrimental to the public health, safety and welfare.

E. Subsequent to denial of a permit, the City shall provide the applicant with reasonable notice and opportunity to be heard and that said denial is in compliance with the provisions of these Policy and Procedures.

Section 5. Construction Standards

A. The construction, operation, maintenance, and repair of facilities in the right-of-way shall be in accordance with applicable health, safety and construction codes as well as those standards promulgated by the City.

B. All facilities shall be installed and located with due regard for minimizing interference with the rights and convenience of property owners, including the City.

C. No applicant shall place facilities where they will damage or interfere with the use or operation of previously installed facilities or obstruct or hinder other utilities serving the residents and businesses in the City.

D. If available, applicants shall make a good faith attempt to co-locate their facilities with as many other utilities as possible so as to maximize the efficient allocation of space in the right-of-way. In instances where the City has

placed conduit or ducting in the right-of-way and made it available, applicants shall install their facilities within the City conduit or ducting system, unless applicants can show a substantial hardship preventing such placement.

E. Any and all public right-of-way damaged or disturbed during the facilities work shall be promptly repaired or replaced by the applicant to its functional equivalence prior to being damaged or disturbed.

F. Any contractor, agent, affiliate, employee, or subcontractor used for facilities work in the right-of-way must be properly licensed under the laws of the State and all applicable local ordinances. Each contractor, agent, affiliate, employee, or subcontractor shall be accountable for the obligations herein to the same extent as the applicant. The applicant shall be ultimately responsible to ensure the contractor, agent, affiliate, employee, or subcontractor fully complies with the provisions of these Policies and Procedures and likewise shall be responsible for all acts or omissions of the contractor, agent, affiliate, employee, or subcontractor. Furthermore, upon written notice by the City, the applicant shall be responsible for promptly correcting acts or omissions by any contractor, agent, affiliate, employee, or subcontractor.

G. Within 30-days of completion of any facilities work in the right-of-way, applicant shall provide City with a complete set of "as-built" drawings. Preliminary plans shall satisfy this requirement so long as those preliminary plans accurately reflect the facilities work done.

Section 6. Fees

Every applicant for facilities work in the right-of-way, at the time of filing of the permit application, shall pay to the City the applicable permit fees, except that any State or local government, governmental agency, public or private school, or water district organized under K.S.A. 19-3501 et seq., shall be exempt from the permit fees mandated exclusively by these Policy and Procedures.

Likewise, the permit fees mandated exclusively by these Policy and Procedures shall be waived for any facilities work in the right-of-way to extend utility service to a State, local or other governmental agency, public or private school facility.

Right-of-way permit fees may be established by Resolution of the Governing Body of the City of Andale, Kansas.

Every occupant performing work in the right of way shall be required as a condition of their permit to post a performance bond, in a form acceptable to the City, from a surety licensed to conduct surety business in the State of Kansas, ensuring appropriate and timely performance in the construction and maintenance of facilities located in the right of way. The amount and term of the

performance/maintenance bond shall be determined by the City based upon the size and scope of the work sought to be performed under the permit.

Section 7. Failure to Restore Right-of-Way

If the occupant fails to restore the right of way in the manner and to the condition required by these Policy and Procedures, or any applicable City ordinance, rule or regulation, or fails to satisfactorily and timely complete all restoration required by the City, the City shall issue a written notice of violation giving the occupant ten (10) days to restore the right-of-way in the manner and to the condition required by these Policy and Procedures. If the occupant fails to make the repairs required by the City, the City may affect those repairs and charge the occupant the cost of those repairs. If the City incurs damages as a result of a violation of this Section, then the City shall have a cause of action against the occupant for violation of this Section, and may recover its damages, including reasonable attorney fees, if the occupant is found liable by a court of competent jurisdiction.

Section 8. Relocation of Facilities

A. The City will attempt to provide affected utilities with as much notice as possible, prior to the need for relocation. In any event, no later than 90 days from written notice by the City, any occupant with facilities in the right-of-way shall, at its own expense, temporarily, or permanently remove or relocate, change or alter the position of any facilities within the right of way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for:

1. Construction, repair, maintenance or installation of any City or other publicly funded project or improvement in or upon the public ways; and/or
2. Operations of the City in and upon the right-of-way.

B. Whenever possible, the relocation, change or alteration of any facilities shall be underground unless waived by the City. The City may waive this underground requirement for technical reasons or if underground placement would cause severe hardship to the occupant.

C. Relocation of facilities must be completed no later than 90 days from the date written notice was provided to the occupant by the City. This time period may be extended by the City for good cause as demonstrated by the occupant.

D. Any relocation of facilities at the City's request must comply with all City ordinances except that the occupant shall not be required to pay any permit fees.

E. The City shall provide occupant written notice of the failure to properly remove or relocate facilities. After 14 days from said written notice and in the event an occupant fails to remove, relocate or otherwise rearrange any facilities, the City may, at its option and in addition to the imposition of any penalties or any other remedies available, undertake or cause to be undertaken, such necessary removal or relocation. Any damages suffered by the City or its contractors as a result of such occupant's failure to timely remove or relocate its facilities shall be borne by such provider. Future permit applications may not be granted to the same or related occupant until such time as those facilities are removed or relocated. The City shall have no liability for any damage caused by such removal or relocation and the occupant shall be liable to the City for all reasonable costs incurred by the City in such removal or relocation.

Section 9. Abandonment/Removal of Facilities

A. An occupant who has determined to discontinue its operations in the City must either:

1. Provide satisfactory information to the City that the occupant's obligations for its facilities under these Policy and Procedures have been lawfully assumed by another occupant; or

2. Submit to the City a proposal and instruments for dedication of its facilities to the City. If an occupant proceeds under this clause, the City may at its option:

a. Accept the dedication for all or a portion of the facilities; or

b. Require the occupant, at its own expense, to remove the facilities in the right of way at ground or above ground level; or

c. Require the occupant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

B. Any occupant who has abandoned facilities in any City right-of-way shall remove them immediately unless such removal would cause unnecessary disruption and destruction to existing facilities or the right-of-way. For purposes of these Policy and Procedures, "abandoned facilities" includes any facilities that have not been used for the purpose for which they were constructed over a continuous period of 12 months. The City will notify occupants in writing of their intentions to proceed under this Section. The occupant shall have 60 days to remove or otherwise remedy the situation to the satisfaction of the City. In addition to any other remedy available in law or equity, where facilities are abandoned, the City may either, take possession of the facilities, abate the

facilities or require the occupant or the successor in interest to the occupant to remove the facilities at their expense.

Section 10. Liability

Every occupant of public rights-of-way shall assume all liability for any work which it performs in the right-of-way.

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 provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the occupant, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, removing or maintaining facilities in a public right-of-way. The indemnity provided by this Section 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 the State of Kansas without, however, waiving any governmental immunity available to the City under state or federal law and without waiving any defenses of the parties under state or federal law. 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.

An occupant or the City shall promptly advise the other in writing of any known claim or demand against the occupant or the City related to or arising out of the occupant's activities in the public right-of-way.

Section 11. Definitions

In this Policy and Procedures, the following terms will have the following meanings:

Applicant: Any person or entity seeking a permit from the City to conduct or, in the case of an emergency, recognize work in a public right-of-way. An applicant must be properly registered before submitting a permit application.

City: City of Andale, Kansas.

Entity: A corporation, partnership, limited liability company, association, firm and any governmental agency, authority, board, agency or department.

Facilities: Including, but not limited to, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennas, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, and other like equipment, fixtures and appurtenances used in connection with transmitting, supplying or furnishing utility services, cable television, communications, signaling, electricity, water, natural gas, steam or other services or similar functions.

Liability Insurance: An amount not less than the minimums as set by the City, to protect the City and the Governing Body, officers, employees, and authorized agents thereof to the full extent indemnified hereunder from and against all claims by any person whatsoever for loss or damage from personal injury, death or property damage occasioned in any manner by the use of a public right-of-way. This provision may be satisfied by supplying the City a letter of self-insurance and appropriate documentation verifying the applicant's ability to provide no less than the minimum coverage required.

Occupant: Any person or entity that occupies, uses, or seeks to occupy or use public lands or a public right-of-way through the placement of facilities therein. If the owner of any facilities leases, subleases, assigns or licenses the control or responsibility of any of those facilities to another person or entity, then the lessee, sublessee, assignee or licensee shall be deemed an occupant for that portion of such facilities.

Person: An individual or natural person.

Right-of-Way: 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 telecommunications or other non-wire telecommunications or broadcast service.

Utility Service: The providing, transmitting, supplying or furnishing cable television, communications, signaling, electricity, water, natural gas, steam or other similar service.

THE CITY OF ANDALE, KANSAS
RIGHT-OF-WAY PERMIT

(Pursuant to The Andale Right-of-Way Maintenance Policy and Procedures)

DATE:

PERMITEE (Name and Address):

PROJECT DESCRIPTION:

LOCATION AND/OR ROUTE WITHIN RIGHT-OF-WAY:

PERMIT CONDITIONS:

The Permittee is permitted to undertake the described project at the described location within the public right-of-way within the City of Andale, Kansas in compliance with the provisions of The City of Andale, Kansas Right-of-Way Maintenance Policy and Procedures as adopted by Ordinance No. 16-2 and subject to the following conditions:

- A. The construction, operation, maintenance, and repair of facilities in the right-of-way shall be in accordance with applicable health, safety and construction codes.
- B. All facilities shall be installed and located with due regard for minimizing interference with the rights and convenience of property owners, including the City.
- C. The permittee shall not place facilities where they will damage or interfere with the use or operation of previously installed facilities or obstruct or hinder other utilities serving the residents and businesses in the City.
- D. If available, the permittee shall make a good faith attempt to co-locate its facilities with as many other utilities as possible so as to maximize the efficient allocation of space in the right-of-way. In instances where the City has placed conduit or ducting in the right-of-way, the permittee shall install their facilities within the City conduit or ducting system, unless the permittee can show a technological or other reasonable incompatibility preventing such placement.
- E. Any and all public right-of-way damaged or disturbed during the facilities work shall be promptly repaired or replaced to its functional equivalence prior to being damaged or disturbed.

F. Any contractor, agent, affiliate, employee, or subcontractor used for facilities work in the right-of-way must be properly licensed under the laws of the State and all applicable local ordinances. Each contractor, agent, affiliate, employee, or subcontractor shall be accountable to the obligations herein to the same extent as the permittee. The permittee shall be ultimately responsible to ensure the contractor, agent, affiliate, employee, or subcontractor fully complies with this permit and likewise shall be responsible for all acts or omissions of the contractor, agent, affiliate, employee, or subcontractor. Furthermore, upon written notice by the City, the permittee shall be responsible for promptly correcting acts or omissions by any contractor, agent, affiliate, employee, or subcontractor.

G. Within 30-days of completion of any facilities work in the right-of-way, the permittee shall provide City with a complete set of "as-built" drawings. Preliminary plans shall satisfy this requirement so long as those preliminary plans accurately reflect the facilities work done.

H. The permittee shall, at its own expense, temporarily, or permanently remove or relocate, change or alter the position of any facilities within the right of way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for:

1. Construction, repair, maintenance or installation of any City or other publicly funded project or improvement in or upon the public ways; and/or

2. Operations of the City in and upon the right-of-way.

I. Whenever possible, the relocation, change or alteration of any facilities shall be underground unless waived by the City. The City may waive this underground requirement for technical reasons or if underground placement would cause severe economic hardship to the permittee.

J. Relocation of facilities must be completed no later than 90 days from the date written notice was provided to the permittee by the City. This time period may be extended by the City for good cause as demonstrated by the permittee.

K. Any relocation of facilities at the City's request must comply with all City ordinances except that the permittee shall not be required to pay any permit fees.

L. If the permittee determines to discontinue its operations in the City, it must either:

1. Provide satisfactory information to the City that the permittee's obligations for its facilities under this permit have been lawfully assumed by another; or

2. Submit to the City a proposal and instruments for dedication of its facilities to the City. If the permittee proceeds under this clause, the City may at its option;

- a. Accept the dedication for all or a portion of the facilities; or

- b. Require the permittee, at its own expense, to remove the facilities in the right of way at ground or aboveground level; or

c. Require the permittee to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

M. Any abandoned facilities in any City right-of-way shall be removed immediately unless such removal would cause unnecessary disruption and destruction to existing facilities or the right-of-way. For purposes of this permit, "abandoned facilities" shall mean any facilities that have not been used for the purpose for which they were constructed over a continuous period of 12 months. The City will notify the permittee in writing of its intentions to proceed with this procedure. The permittee shall have 60 days to remove or otherwise remedy the situation to the satisfaction of the City. In addition to any other remedy available in law or equity, where facilities are abandoned, the City may either, take possession of the facilities, abate the facilities or require the permittee or the successor in interest to the permittee to remove the facilities at its expense.

N. The permittee shall assume all liability for any work which it performs in the right-of-way.

O. The permittee 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 provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the occupant, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right of way.

Issued by the City of Andale, Kansas on this ____ day of _____, 20__.

Mayor

CITY SEAL

ATTEST

City Clerk