

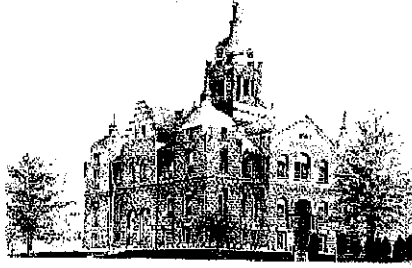
Johnson County Commission

Troy A. Matthews
Presiding Commissioner

John L. Marr
Commissioner, Eastern District

Charles Kavanaugh
Commissioner, Western District

Diane Thompson
County Clerk



Johnson County Courthouse
300 N. Holden Street, Suite 203
Warrensburg MO 64093
660-747-2112
www.jococourthouse.com
CountyCommissioners@jocomo.gov

Bill No. 143

Ordinance 24-03 – Amended
December 9, 2024

Page 1

ORDINANCE: AN ORDINANCE AND ORDER OF THE JOHNSON COUNTY COMMISSION REGULATING CONSTRUCTION AND USE OF COUNTY-MAINTAINED PUBLIC ROAD RIGHT OF WAY

WHEREAS, § 49.650, RSMo. authorizes the governing authority of each county with the power to adopt ordinances or resolutions relating to its property, affairs, and local government for which no provision has been made in the constitution of this state or state statute regarding, among other subjects, county roads controlled by the county; and

WHEREAS, § 229.100, RSMo. provides that no person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated, with the approval of the county commission; and

WHEREAS, §§ 67.1830 – 67.1848, RSMo. sets forth statutory provisions relating to regulation of county right of way and authorizes a county to manage its public rights-of-way, including, among other subjects, to require right-of-way users seeking to excavate within public right-of-way to obtain a right-of-way permit and to impose permit conditions consistent with the county's management of the right-of-way; require right-of-way users to provide required notice to the county by submitting plans for anticipated construction projects that require excavation within the public right-of-way; and

WHEREAS, the County Commission of Johnson County, Missouri desires to adopt this Ordinance and rules and regulations governing construction and use of county-maintained public road right-of-way.

NOW, THEREFORE, it is hereby ORDERED, by the County Commission of Johnson County, Missouri, as follows:

Effective January 1, 2025, the Johnson County Commissioners authorize the following specifications and procedures to be used when any utility company or individual will be using county right-of-way for installation of buried lines or driveways or field entrances or roads in Johnson County:

1. Road Crossing and Road Right-of-way Construction (Utility Lines).
 - a. Application.
 - i. All right-of-way users seeking to excavate within a public right-of-way shall make application and obtain a right-of-way permit and the County may impose permit conditions consistent with the County's management of the right-of-way.
 - ii. Application for road crossings and road right-of-way construction and installation shall include a copy of the plan in its entirety.

- iii. All right-of-way users shall provide required notice to the County by submitting plans for anticipated construction projects that require excavation within the public right-of-way.
 - iv. Any person wishing to bury wire, pipe, cable, fiber optics, or other lines on or across county road right-of-way shall complete and submit an Application for Road Crossing and Road Right-of-way Construction and present it to the Johnson County Clerk for approval by the Johnson County Commission at least two (2) weeks prior to project start date. An Application (crossing or easement installation) is required for each project as long as the work will be completed within six (6) months of the start of work and shall include the nearest intersecting road(s) at the start and end of work, distance of excavation, and type of utility to be installed. One (1) application for right-of-way permit may be submitted for multiple county road segments, and the applicant shall be charged with paying the fee associated with the proposed work to be performed and posting the surety bond, insurance or deposit associated with the proposed work.
 - v. Applications for lines to be buried in the 100-year floodplain must be accompanied by a Floodplain Development Permit/Application.
 - vi. Sewer and Water Lines. All public water supply districts, sewer districts, and municipalities shall have the right to lay, install, construct, repair, and maintain sewer and water lines in public highways, roads, streets, and alleys, subject to the reasonable rules and regulations of the County.
- b. Surety Bond, Insurance, or Deposit are required with the submission of the application.
- i. Any utility and/or cable company using a county right-of-way for each single, perpendicular road crossing installation of any utility or cable lines shall deposit with the County \$5,000 in cash or surety bond for each right-of-way crossing. Any utility and/or cable company using county right-of-way for parallel installation of any utility or cable lines shall deposit with the County \$50,000 in cash or surety bond for each segment of installation located county road intersection to county road intersection along the project path.
 - ii. The County may require any utility company to purchase and maintain insurance in adequate coverage limits to cover any property damages or injuries which may occur during or after construction of the installation in addition to the bond required under this section. The utility company shall name County as additional insured on any such policy and shall provide County with a certificate of such insurance upon request.
 - iii. The requirements for bond or insurance shall not apply to any public utility with net assets of \$25,000,000 or more that does not have a history of noncompliance with other permitting requirements.
- c. Fees.
- Fees for permits shall be as provided in paragraph 7 and as set forth in Exhibit A, which is incorporated herein by reference.

d. Specifications.

- i. When a line is being buried, it shall be at a minimum of 42 inches under the roadway and 42 inches below the flow line of ditch. If utility and communication lines are not buried with 42 inches of cover and are within the County easement, they must be moved at the utility company's expense to accommodate grading of back slope.
- ii. Any water line or sanitary sewer force main must be in a steel encasement from ditch to ditch.
- iii. In areas where solid rock is encountered within road right of way, or in a road ditch or stream, and with written approval of the County Road and Bridge Department Supervisor or designated representative, buried utility and communications may be buried less than 42 inches.
- iv. Any road crossing where surface is disturbed, the trench and road surface will be filled according to the Ordinance Regulating Construction and Maintenance of County-Maintained Public Roads.
- v. When approaching bridges or a road tube, lines shall be greater than 18 feet from the road centerline when within 15 feet of the extended centerline of the road tube or bridge. No lines will be attached to bridges without prior written permission of the County Road and Bridge Department Supervisor or designated representative.
- vi. All lines installed by a utility company or individual on county rights-of-way shall be as close to property lines as possible. No lines shall be laid parallel in the road surface and the roadbed itself except as approved in writing by the County Road and Bridge Department Supervisor or designated representative. Within one year any area (road surface or right of way easement) that has settled must be filled and brought back to county specifications.

2. Driveway, Field Entrance, or Road Entrance Construction.

a. Application.

- i. Anyone wishing to install a driveway or field entrance or road entrance intersecting a county-maintained road or across a county road right-of-way shall complete and submit an Application for Driveway, Field Entrance, and Road Entrance Construction and present it to the Road and Bridge Department for approval by the Road and Bridge Department Supervisor or designated representative at least two (2) weeks prior to project start date.
- ii. Application for Driveway, Field Entrance, or Road Entrance Construction shall include a copy of the plans in its entirety (engineer stamped plans may be required). The plans shall specify whether the access is to a residence, business, or agricultural land; the number of residences or businesses served by the driveway (i.e., subdivision); the location of the nearest intersection on either side of the proposed driveway or field entrance location; and the distance to any obstructions to sight from the road. If the application is for a road that may eventually be petitioned for acceptance and maintenance by the County, the applicant should refer to the County's regulations on road standards.
- iii. In the event of a requested change of use of an existing driveway, field entrance or road entrance intersecting with a county-maintained road, an application shall be submitted for the new use of the intersection.

- iv. Applications for lines to be buried in the 100-year floodplain must be accompanied by a Floodplain Development Permit/Application.
- b. Surety Bond, Insurance, and Deposit are NOT required with the application.
- c. Fees for permits shall be as provided in paragraph 7 and as set forth in Exhibit A, which is incorporated herein by reference.
- d. Specifications.
 - i. Culvert / Drainage: All driveways, field entrances, or road entrances crossing a drainage ditch shall contain a culvert placed flush with the ditch bottom and sized according to the County Road and Bridge Department Supervisor or designated representative's requirements. Exception may be allowed if the entrance was at the crest of a hill. The landowner will purchase the culvert and provide the receipt of culvert purchase to the Johnson County Road and Bridge Department, the Johnson County Road and Bridge Department will install culverts along county-maintained roads, any fill material needed is to be purchased by the property owner and at the property owner's request. The County Road and Bridge Department may maintain the drainage of the culvert; the landowner will maintain the culvert and the material that covers the culvert. The Johnson County Road and Bridge Department has the right to remove any and all culverts that do not meet the requirements.
 - 1. Driveway or Field Entrance Culvert: Minimum of fifteen (15) inches in diameter and twenty-four (24) foot long, larger culvert may be required. The culvert must be 16-gauge galvanized metal or heavier or double walled plastic (ADS) pipe, plastic may not be used in some locations.
 - 2. Multiple Residences or Businesses Culvert: Minimum of fifteen (15) inches in diameter, fifty (50) feet in length and approved metal construction with flared ends on culvert; larger culvert may be required. The culvert must be of 16-gauge galvanized metal or heavier or double walled plastic (ADS) pipe, plastic may not be used in some locations.
 - ii. Sight Distance: To the extent possible, driveways and field entrances will be located away from areas with reduced sight distances. The County will provide the following sight distance guidance however it is the Developers responsibility to meet AASHTO and MoDOT requirements for site distance on all multiple residences or businesses served by a driveway (i.e., subdivision) entering county roads. A licensed engineer must approve, in writing, on site distance of subdivision roads entering county roads as well as driveways connected to the County Road.

1. Driveways or Field Entrances

- a. Minimum sight distance on driveway shall be measured 12' from the edge of driveway as follows (distance on intersecting roadway)

Required Sight Distance	Road Speed Limit
465 feet	50 miles per hour
395 feet	45 miles per hour
330 feet	40 miles per hour
275 feet	35 miles per hour
220 feet	30 miles per hour
155 feet	25 miles per hour

- b. Driveways or Field Entrances shall be spaced according to the following:

Minimum distances between driveways or field entrances shall be 35 feet. Minimum distances between driveways and road intersections shall be 50 feet.

- e. Variances.

In the event an applicant is not able to meet the requirements of this section relating to Driveway, Field Entrance, or Road Entrance Construction, and full conformance to the provisions of these regulations is impractical or impossible due to the size, shape, topographic location or condition of the proposed Driveway, Field Entrance, or Road Entrance, an applicant may request a variance from the County Commission. In determining a request for variance, the County Commission may consider: (1) special circumstances or conditions affecting the property; (2) that the variance is necessary for the reasonable and acceptable development of the property in question; and (3) granting the variance will not be detrimental to the public welfare and will not injury other property in the area in which the subject property is located.

3. Denials of Applications.

- a. An application for right-of-way or an application for driveway, field entrance and road entrance construction permit may be denied if the right-of-way user fails to provide all the necessary information requested by the County for managing the public right-of-way.
- b. An application for right-of-way or an application for driveway, field entrance and road entrance construction permit may be denied if the right-of-way user has failed to return the public right-of-way to its previous condition under a previous permit.
- c. An application for right-of-way or an application for driveway, field entrance and road entrance construction permit may be denied if the County has provided the right-of-way user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the permit application or a reasonable alternative route that will result in neither additional installation expense of more than ten percent to the right-of-way user nor a declination of service quality.
- d. An application for right-of-way or an application for driveway, field entrance and road entrance construction permit may be denied if the County determines that denial is necessary to protect the public health and safety, provided that the authority of the County does not extend to those items under the jurisdiction of the Public Service Commission, such denial shall not interfere with a public utility's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis.

4. Revocations.

- a. The County may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit granted to a right-of-way user, with or without fee refund, and/or impose a penalty as established by the County until the breach is cured, but only in the event of a substantial breach of the terms and material conditions of the permit. A substantial breach by a permittee includes, but is not limited to: (1) a material violation of a provision of the right-of-way permit; (2) an evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens; (3) a material misrepresentation of fact in the right-of-way permit application; (4) a failure to complete work by the date specified in the right-of-way permit, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; and (5) a failure to correct, within the time specified by the political subdivision, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes that are no more stringent than national safety codes, upon inspection and notification by the County of the faulty condition.

5. Timing.

- a. Except in an emergency, the County shall promptly process all completed permit applications prior to the right-of-way user performing construction or excavation work within a public right-of-way, within thirty-one days. If the County fails to act on an application for a right-of-way permit within thirty-one days, the application shall be deemed approved. In order to avoid excessive processing and accounting costs to the County and right-of-way users, the County may establish procedures for bulk processing of permits and periodic payment of permit fees. In the event emergency repairs are required by a right of way user, users shall provide written notice to the County within 24 hours after the emergency right of way repairs are made and shall describe the location, and the nature and extent of the repairs required.
- b. Right of way permits shall be issued and valid for an initial six (6) months period, which may be extended for an additional six (6) month period for good cause shown by making written request to the County Commission.

6. Access

- a. At the start of work at a job site the necessary warning signs must be in place for public safety.
- b. One-half of the roadway shall be open at all times. Closure of a roadway during construction must be requested with the application and approved by the County Commission or designated representative.
- c. As a condition for issuance of a Right of Way Permit, permit holders and their employees and contractors shall be prohibited from parking equipment on private property without the relevant property owner's permission.

7. Fees.

- a. The County may recover its right-of-way management costs by imposing a fee for permits issued by the County. Right-of-way permit fees imposed by the County shall be: (1) based on the actual, substantiated costs reasonably incurred by the County in managing the public right-of-way; (2) based on an allocation among all users of the public right-of-way, including the County, which shall reflect the proportionate costs imposed on the County by each of the various types of uses of the public right-of-way; (3) imposed on a competitively neutral and nondiscriminatory basis; and (4) imposed in a manner so that above ground uses of the public right-of-way do not bear costs incurred by the County to regulate underground uses of the public right-of-way. Fees for permits shall be as set forth in Exhibit A, which is incorporated herein by reference.

8. Restoration; Damage.

- a. Any right-of-way user, after excavation of a public right-of-way shall provide for restoration of the right-of-way way and surrounding areas, including any pavement and foundation, in accordance with the standards and conditions of the County, unless the County, at its option, chooses to perform its own street restoration, in which case the right-of-way user shall be responsible for reimbursing the County its reasonable actual restoration costs within thirty (30) days of invoice. Restoration of public right-of-way shall be completed within the dates specified in the right-of-way permit, unless the permittee obtains a waiver, extension or a new or amended right-of-way permit. Every right-of-way user to whom a right-of-way permit has been granted shall guarantee for a period of four years the restoration of the right-of-way in the area where such right-of-way user conducted excavation and performed the restoration.
- b. If a right-of-way user fails to restore the public right-of-way within the date specified in the right-of-way permit, or has not acquired a waiver or extension to such permit, the County is authorized to perform its own restoration required as a result of the construction, excavation or use, and require the right-of-way user to reimburse the County for the actual costs of restoration.
- c. If installations are not being done according to County specifications, the County can stop construction of the project until damage is repaired. At the discretion of the County Road and Bridge Department Supervisor or designated representative, construction can resume.
- d. The utility company or individual will be responsible for all damage to county roads and right of way, and reimbursement by the utility company or individual for damage shall be made in full if adequate repairs are not made.

9. Inspections.

- a. Inspections are completed throughout the project process by the County Road and Bridge Department Supervisor or a Designated Representative including but not limited to: prior to start, during project, at completion, and one (1) year after completion to verify and determine the project has been done according to county specifications and done satisfactorily.

10. Safety Rules.

- a. The performance of construction and excavation work in the public right-of-way shall be in accordance with applicable safety and construction codes. The County is authorized to require right-of-way users to comply with national safety codes and all other applicable ordinances, to the extent not inconsistent with public service commission laws or administrative rules.

- b. Any contractor or subcontractor used for the performance of construction or excavation work in the public right-of-way shall be properly licensed pursuant to the laws of the state and all applicable local ordinances, if required, and each contractor or subcontractor shall have the same obligations with respect to its work as a right-of-way user would have. The right-of-way user shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its permits and applicable law and responsible for promptly correcting acts or omissions by any contractor or subcontractor.

11. Approval and Release of Deposit / Surety Bond.

- a. The County Road and Bridge Department Supervisor or a Designated Representative submits the completed Right of Way Application to the County Commission with a recommendation for the deposited money or the surety bond to be released.
- b. County Commission authorizes the County Clerk to release the before mentioned surety bond or payment to the issuer and the right-of-way project is considered closed.

12. Limitations.

- a. Nothing in this Ordinance and Order shall be deemed to relieve a right-of-way users of the provisions of an existing franchise, franchise fees, license or other agreement or permit previously in effect. Nothing in this Ordinance and Order shall prohibit the County from renewing or entering into a new or existing franchise as long as all other public utility right-of-way users have use of the public right-of-way on a nondiscriminatory basis.
- b. Nothing in this Ordinance and Order shall prohibit the County from enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent consistent with state and federal law. Nothing in this Ordinance and Order shall prohibit the County from enacting, enforcing or renewing provisions of an ordinance to require a gross receipts tax.

13. Enforcement.

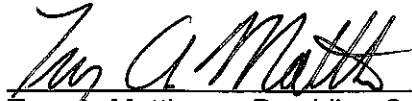
As a condition of submitting an application under this Order and receiving a permit or other approval under this Order, the applicant acknowledges and agrees that the applicant shall be liable in an action brought in the name of the County for the enforcement of the provisions of this Order. In addition to any other remedies County may have at law or in equity, an applicant shall be responsible for all of the County's costs, charges and expenses, including reasonable attorney's fees, incurred in connection with the interpretation, application and enforcement of the provisions of this Order or due to a breach of the terms and conditions of issuance of a permit, including, but not limited to failure to post a sufficient or appropriate surety bond, to obtain and maintenance required insurance, failure to submit required deposits and fees; failure to comply with required specifications and setbacks; failure to restore damage to the right-of-way.

14. Repeal of Prior Procedures.

The procedures set forth in this Order supersedes all previous procedures which are hereby repealed and replaced. All future right-of-way construction located within County right-of-way must conform to these regulations.

ORDERED, SIGNED AND SEALED BY OUR HAND THIS 9th DAY OF DECEMBER IN THE YEAR 2024.

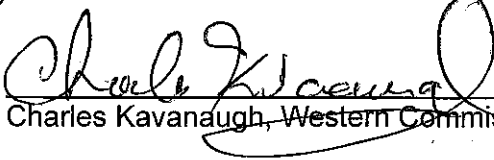
THE JOHNSON COUNTY COMMISSION



Troy A. Matthews, Presiding Commissioner




John L. Marr, Eastern Commissioner



Charles Kavanaugh, Western Commissioner



ATTEST: 

Diane Thompson, County Clerk

Exhibit A
Right-of-way Permit Fees

Road Crossing and Road Right-of-way Construction (Utility Lines) [Paragraph 1]

Perpendicular excavation/bore: \$150.00 per road crossing

Parallel excavation/bore: \$250.00 for each road segment located from one county road intersection to the next county road intersection

Emergency repairs: No fee

Driveway, field entrance, or road entrance construction [Paragraph 2]: No fee