ORDINANCE NO. 9680

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,
REPEALING EXISTING CHAPTER 16, ARTICLE 8 AND
ENACTING, IN ITS PLACE, CHAPTER 16, ARTICLE 8 OF THE
CODE OF THE CITY OF LAWRENCE, KANSAS, 2018 EDITION,
AND AMENDMENTS THERETO, PERTAINING TO THE
TEMPORARY USE OF PUBLIC RIGHTS OF WAY.

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

SECTION 1. Existing Chapter 16, Article 8, of the Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent of the Governing Body that Section 2 of this Ordinance supersedes it.

SECTION 2. The Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby amended by adding Chapter 16, Article 8, which reads as follows:

ARTICLE 8. THE TEMPORARY USE OF PUBLIC RIGHTS OF WAY

16-801 PURPOSE.
The Governing Body finds that, in order to advance the health, safety, and welfare of the residents of the City of Lawrence, Kansas, it is necessary to regulate certain activities, including the temporary use of public rights of way.

16-802 DEFINITIONS.
The following words, terms, and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings:

(a) “City” shall mean the City of Lawrence, Kansas, its Governing Body, or any duly designated or appointed representative thereof.

(b) “MSO” shall mean the Department of Municipal Services and Operations.

(c) “Person” shall mean any natural person, business association, or business entity, including but not limited to a corporation, a partnership, a limited liability company, a sole proprietorship, a political subdivision of the State or other governmental entity, a public or private agency, a utility, or any other legal entity, or any successor or assign of any of the foregoing.

(d) “Public Rights of Way” shall mean those areas of real property in which the City has a right-of-way interest, whether through purchase, dedication, or other means of acquisition. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, or other public way.

(e) “ROW Permit,” as used herein, shall mean any Temporary Right of Way Permit or any Annual Right of Way Permit.

(f) “Temporary” shall mean a period of time less than 180 consecutive days.
NOTICE TO THE PUBLIC.

(a) The Governing Body hereby gives notice to the public that the City has the right to make immediate use of any and all Public Rights of Way, in their entirety, for street, sidewalk, utility, storm sewer, and drainage purposes, and for the construction, installation, inspection, maintenance, repair, and removal of the same. Generally, the City will not compensate any adjoining landowner for damage to plants, trees, sprinklers, or other private improvements or appurtenances located overhead, above-ground, or underground in the Public Rights of Way, as the result of any construction, installation, inspection, maintenance, repair, or removal of streets, sidewalks, utilities, storm sewers, or drainage ways.

(b) The Governing Body hereby gives notice to the public that the Chief of Police has the authority to close Public Rights of Way in order to protect the health, safety, and welfare of the community in cases of emergency or when it is anticipated that there will be a large influx of people to a particular area of the City. The duration of the closure of the Public Rights of Way hereunder shall last only as long as is necessary to accomplish the purposes causing the closure.

PERMIT REQUIRED. No Person, unless otherwise exempted either by this Article or by Article 9 of this Chapter, shall use the Public Rights of Way on a Temporary basis without first obtaining from the City and having in their possession a valid ROW Permit.

APPLICATION. Application for a ROW Permit shall be made in writing to the MSO on a form or on a platform provided by the MSO for that purpose. The applicant shall complete the form in full and shall provide all information requested therein, including but not limited to the name of the applicant, contact information, the date or dates for which the Permit is sought, the location and nature of the proposed use, an approved traffic control plan (if necessary), other approved plans (if necessary), certificate(s) of insurance (if necessary), a performance and maintenance bond (if necessary), payment of the ROW Permit Fee and any Additional ROW Fee required by Section 16-806, and any and all other information that may be required by the MSO to review and to process the application.

ROW PERMIT FEES.

(a) ROW Permit Fees. Together with the Application for a ROW Permit, the applicant shall remit to the City a nonrefundable ROW Permit Fee. The ROW Permit Fee shall be determined annually by the City Manager, or his or her designee, on or before February 1 of each year, and the ROW Permit Fees shall be included on the Schedule of Right of Way Fees. The Schedule of Right of Way Fees shall be made available to the public during regular business hours at the City Clerk’s office and the office of the MSO and shall be posted on the City website. The ROW Permit Fee shall be reasonable and shall be calculated to recapture the City’s costs of processing the application.
(b) **Additional ROW Fees.** In addition to the ROW Permit Fee, the application shall remit to the City any Additional ROW Fees required by the Administrative Regulations promulgated hereunder. Such Additional ROW Fees, unless the Administrative Regulations specifically provide otherwise, shall be nonrefundable.

**16-807 INSURANCE.**

(a) The applicant for a ROW Permit shall file with the MSO, together with the application, a certificate of general liability insurance in an amount not less than $1,000,000.00, unless a different amount is otherwise required by the MSO in accordance with subsection (b). If required by law, the applicant shall also file with the MSO a certificate of Worker's Compensation insurance in the amount required by law, or, provided the applicant has no employees, a written certificate to that effect. The City shall be named as an additional insurer on all such policies. The insurance shall be written by companies licensed to provide insurance in the state of Kansas, in good standing with the State of Kansas Department of Insurance, and acceptable to the City.

(b) Depending on the nature of the proposed use of the Public Rights of Way, the MSO may, in the exercise of its discretion, require general liability insurance coverage in an amount exceeding $1,000,000.00, may require general liability insurance coverage in an amount less than $1,000,000.00, or may, upon the written request of the applicant and good cause shown, waive the requirement for general liability insurance.

**16-808 BOND.**

Every applicant for a ROW Permit involving an excavation of the Public Right of Way shall post with the MSO an annual performance and maintenance bond to ensure the appropriate and timely performance of all work in the Public Rights of Way without the attachment of any liens or other encumbrances and to warranty all work done in the Public Rights of Way. The amount of the bond shall be established and set forth in the Administrative Regulations promulgated hereunder.

**16-809 ROW PERMIT ISSUANCE; DENIAL.**

(a) The MSO shall review each application for a ROW Permit and may, in the exercise of its discretion, upon a finding that the application is complete, that the requisite ROW Permit Fee, including any Additional ROW Fee has been paid, that the proposed use is Temporary in nature, and that, in view of the proposed location, the proposed use will not constitute a traffic safety hazard, will not destroy, damage, or impair the Public Rights of Way or use of the Public Rights of Way, and will serve a legitimate purpose, issue to the applicant a ROW Permit.

(1) In the exercise of its discretion, the MSC may impose additional conditions on the issuance of any ROW Permit, as may be necessary.
(b) The MSO may, in the exercise of its discretion, deny any application for a ROW Permit if the application is incomplete, if the ROW Permit Fee or any Additional ROW Fee has not been paid, if the application does not otherwise meet all the requirements of the preceding subsection, if the applicant has had a ROW Permit revoked within the past two years, or if the proposed use will constitute a traffic safety hazard, will destroy, damage, or impair the Public Rights of Way or use of the Public Rights of Way, or will not serve a legitimate purpose.

16-810 ROW PERMIT DISPLAY.
Any ROW Permit Holder shall, at all times, either:

(a) Prominently display the ROW Permit at the site where the Public Right of Way is being used; or

(b) Have the ROW Permit in his, her, or its possession at the site where the Public Right of Way is being used and shall display the same to any officer or employee of the City upon request.

16-811 EMERGENCY.
In the event of an emergency, in order to protect the health, safety and welfare of the community, a Person may perform temporary work in the Public Right of Way or may use the Public Right of Way on a temporary basis without first acquiring from the City a ROW Permit. In the event of an emergency, the Director of MSO shall be notified of the emergency at the earliest practicable time. In such cases, the Director of MSO may require the Person to obtain an after-the-fact ROW Permit and may require the Person to pay the ROW Permit Fee or Additional ROW Fee necessary to cover any costs accruing to the City thereby.

16-812 PERMITS AFFECTING TRAFFIC.
Any application for a ROW Permit that, in any way, affects vehicular or pedestrian traffic shall be accompanied by an approved Temporary Traffic Control Plan that complies with the Manual for Uniform Traffic Control Devices (MUTCD) and any Administrative Regulations adopted by the City in accordance with this Article. At all times during the use of the Public Right of Way, the Public Right of Way shall be signed, barricaded, and otherwise safeguarded. In providing such signs, barricades, and other safeguards, the ROW Permit Holder shall comply with the Temporary Traffic Control Plan, the MUTCD, the Administrative Regulations, all City policies, and all conditions placed on the ROW Permit regarding the placement of signs, barricades, and other safeguards.

16-813 REVOCATION.

(a) The MSO may, in the exercise of its discretion, revoke any ROW Permit issued under this Article if:

(1) The ROW Permit Holder’s use of the Public Right of Way creates a traffic or other safety hazard or will otherwise destroy, damage, or impair the Public Right of Way or use of the Public Right of Way, such that immediate action must be taken to protect the public safety or the Public Right of Way;
The ROW Permit Holder violates any provision of the City Code or other law governing the use allowed by the ROW Permit;

The ROW Permit Holder fails to meet any and all conditions imposed upon the issuance of the ROW Permit;

The ROW Permit Holder fails to comply with any submitted plan, including any Temporary Traffic Control Plan;

The ROW Permit Holder fails to comply with any Administrative Regulation promulgated by the City in accordance with Section 16-817 of this Article; or

The ROW Permit was procured through fraud or misrepresentation.

Any revocation of a ROW Permit shall be in writing, shall state the grounds for the revocation, and shall include an order to cease forthwith use of the Public Rights of Way.

16-814 APPEAL.

(a) Any Person aggrieved by a decision of the MSO in denying an application or revoking a ROW Permit may appeal such decision to the City Commission. Notice of such appeal must be made in writing to the MSO and shall be made within 14 days of the date of the denial or revocation. Said Notice of Appeal shall be in writing and shall state clearly and concisely the reason for the appeal and how or why the MSO erred in denying the application or in revoking the Permit.

(b) The City Commission shall, as soon as may be practicable, schedule the appeal for public hearing. On appeal, the appellant bears the burden of proof. The City Commission shall review the decision de novo. The decision of the City Commission shall be the final decision of the City.

16-815 UNLAWFUL ACTS.

(a) Except in the case of emergency or if otherwise exempted by this Article or Article 9 of this Chapter, it shall be unlawful for any Person to use a Public Right of Way for any Temporary purpose without first obtaining from the City and having, in their possession, a current, valid ROW Permit.

(b) It shall be unlawful for any Person to violate any condition imposed upon the issuance of any ROW Permit.

(c) It shall be unlawful, unless otherwise permitted or exempted hereunder, for any Person intentionally to obstruct traffic in a Public Right of Way.

(d) It shall be unlawful for any Person to place, to leave, or to cause to be placed or left any item in the Public Rights of Way without first obtaining from the City and having, in their possession, a current, valid ROW Permit or an Agreement with the City in accordance with Article 9 of this Chapter.
(e) It shall be unlawful for any Person to violate any other provision of this Article or any Administrative Regulation promulgated by the City in accordance with Section 16-817.

16-816

MUNICIPAL OFFENSE.
Engaging in any of the unlawful acts set forth at Section 16-815 shall be a municipal offense. Each violation shall constitute a separate municipal offense. Each day of violation shall also constitute a separate municipal offense. Any Person violating Section 16-815 shall, upon an adjudication of guilt or the entry of a plea of no contest, be subject to a minimum fine of $1,000.00 and a maximum fine of $2,500.00 for each municipal offense.

16-817

ADMINISTRATIVE REGULATIONS.

(a) In order to protect the health, safety, and welfare of the community, the Director of the MSO, or his or her designee, shall have the power to promulgate Administrative Regulations governing administration of the Temporary Use of Right of Way program established by this Article. Any Regulations promulgated in accordance with this Article shall be dated and shall be available for inspection by the public at the City Clerk's Office and the Office of the MSO during reasonable business hours and the same shall be posted on the City's website.

(b) All users of the Public Rights of Way shall comply with all Regulations promulgated hereunder.

(c) All Regulations promulgated hereunder shall be consistent with the terms of this Article. In the event of any inconsistency or ambiguity, the terms of this Article shall control and supersede the Regulations.

16-818

REVIEW OF FEES.
The Governing Body shall, from time to time, at its discretion, review the Schedule of Right of Way Fees as established by the City Manager, or his or her designee, and shall adjust them as may be necessary to fulfill the goals of this Article and the Governing Body's goal that this program be operated on a revenue-neutral basis.

16-819

EXEMPTIONS.

(a) The provisions of this Article shall not apply to any Person lawfully travelling, by whatever lawful means, in the Public Rights of Way.

(b) The provisions of this Article shall not apply to any Person patronizing or to any Person operating any enterprise located in a Public Right of Way pursuant to a lawful Sidewalk Dining License or other similar permit or agreement.

(c) The provisions of this Article shall not apply to any Person attending a parade, festival, performance, rally, demonstration, or other similar event that is lawfully conducted in or on a Public Right of Way.
(d) The provisions of this Article shall not apply to any person sitting on any chair or bench located on a Public Right of Way that is supplied by a public agency or abutting property owner, or while awaiting public or private transportation at a bus stop.

(e) The provisions of this Article prohibiting the obstruction of traffic on a Public Right of Way shall not apply in the following circumstances:

1. The exercise of a person's constitutional right to picket, to protest, or of assembly, but only to the extent that such right would be impermissibly restricted by operation of this Article.

2. The use of a wheelchair, walker, or other similar device as the result of a disability.

3. Sitting or lying in a Public Right of Way due to a medical emergency.

4. Any accident or mechanical failure occurring in the Public Rights of Way that may, until removed, temporarily obstruct traffic.

SECTION 3. If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 4. After passage, approval, and publication, as provided by law, this ordinance shall be in full force and effect commencing January 1, 2020.

PASSED by the Governing Body of the City of Lawrence, Kansas, this 18th day of June, 2019.

APPROVED:

Lisa Larsen, Mayor

ATTEST:

Sherri Riedemann, City Clerk

APPROVED AS TO FORM:

Toni R. Wheeler, City Attorney
ORDINANCE NO. 9681

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, REPEALING EXISTING CHAPTER 16, ARTICLE 9 AND ENACTING, IN ITS PLACE, CHAPTER 16, ARTICLE 9 OF THE CODE OF THE CITY OF LAWRENCE, KANSAS, 2018 EDITION, AND AMENDMENTS THERETO, PERTAINING TO THE LOCATION OF PRIVATE FACILITIES IN PUBLIC RIGHTS OF WAY.

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

SECTION 1. Existing Chapter 16, Article 9, of the Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent of the Governing Body that Section 2 of this Ordinance supersedes it.

SECTION 2. The Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby amended by adding Chapter 16, Article 9, which reads as follows:

ARTICLE 9. THE LOCATION OF PRIVATE FACILITIES IN PUBLIC RIGHTS OF WAY

16-901 PURPOSE.
The Governing Body finds that, in order to advance the health, safety, and welfare of the residents of the City of Lawrence, Kansas, it is necessary to regulate certain activities, including the location of private facilities in Public Rights of Way.

16-902 DEFINITIONS.
The following words, terms, and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings:

(a) “Abandoned Facilities” shall mean those Facilities owned by a ROW User that are not in use and which are not anticipated to be used by the ROW User or any other Person in the future.

(b) “Agreement” shall mean any Contract Franchise, License Agreement, Memorandum of Understanding, Video Service Provider's Agreement, or other similar agreement with the City, wherein the City grants to a ROW User the right to locate private Facilities in a Public Right of Way on more than a Temporary basis.

(c) “City” shall mean the City of Lawrence, Kansas, its Governing Body, or any duly designated or appointed representative thereof.

(d) “Facilities” shall mean any parking areas, landscaping, structures, lines, pipes, irrigation systems, wires, cables, conduits, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, wireless communications systems, or other structures, equipment, or appurtenances that are intended to be more permanent than Temporary in nature.
(e) "MSO" shall mean the Department of Municipal Services and Operations.

(f) "Person" shall mean any natural person, business association, or business entity, including but not limited to a corporation, a partnership, a limited liability company, a sole proprietorship, a political subdivision of the State or other governmental entity, a public or private agency, a utility, or any other legal entity, or any successor or assign of any of the foregoing.

(g) "Public Improvement" shall mean any existing or contemplated public facility, building, or capital improvement project, including, without limitation, streets, alleys, sidewalks, sewers, water mains, drainage conduits, right-of-way improvements, and other Public Projects.

(h) "Public Project" shall mean any project planned or undertaken by the City, or any other governmental entity, for the construction, reconstruction, maintenance, or repair of public facilities or Public Improvements, or for any public purpose.

(i) "Public Rights of Way" shall mean those areas of real property in which the City has a right-of-way interest, whether through purchase, dedication, or other means of acquisition. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, or other public way.

(j) "ROW User" shall mean any Person who has an Agreement hereunder with the City.

(k) "Service" shall mean a commodity or product provided to a Person by a ROW User by means of a delivery system comprising Facilities located in the Public Rights of Way, including but not limited to gas, electricity, water, sanitary sewers, steam, telephony, telegraphy, Telecommunications Service, wireless communication service, internet service, data transmission, Video Service, open video systems, alarm service, and petroleum pipelines, among others.

(l) "Service Provider" shall mean any Person owning, possessing, or having any interest in Facilities in the Public Rights of Way that are used for the provision of a Service, with or without compensation. Service Provider shall also include any Person owning, possessing, or having any interest in Facilities in the Public Rights of Way that are used by, may be used by, or are intended to be used by third parties, in whole or in part, to provide a Service, with or without compensation, regardless of whether the Person owning, possessing, or having said interest provides any such Service.

(m) "Telecommunications Service" shall mean providing the means of transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.
(n) "Temporary" shall mean a period of time less than 180 consecutive days.

(o) "Video Service" shall mean video programming Service provided through Facilities, without regard to delivery technology, including internet protocol technology.

16-903 LOCATION OF PRIVATE FACILITIES IN PUBLIC RIGHTS OF WAY.
No Person shall, unless otherwise exempted by this Article, locate any private Facilities in a Public Right of Way, on more than a Temporary basis, without first entering into an Agreement with the City.

16-904 LIMITATIONS.
While an Agreement may grant or convey to a Person the right or license to construct, place, replace, repair, maintain, extend, and operate its Facilities along, across, upon, under, or in the Public Rights of Way on more than a Temporary basis, subject to certain restrictions and limitations, no such Agreement shall grant or convey to a Person:

(a) any title, equitable or legal, in the Public Rights of Way; or

(b) any exclusive rights or privileges with respect to use of the Public Rights of Way.

16-905 USE OF THE PUBLIC RIGHTS OF WAY.

(a) Except in cases of emergency or unless the ROW User’s Agreement expressly provides otherwise, no ROW User shall use the Public Rights of Way without first obtaining from the City a Temporary Right of Way Permit or Annual Right of Way Permit in accordance with Chapter 8 of this Chapter. In cases of emergency, unless otherwise exempted, all ROW Users must comply with Section 8-1611 of the City Code, as amended.

(b) Except in cases of emergency, no ROW User shall construct, reconstruct, or relocate Facilities or excavate in the Public Rights of Way without first submitting to the MSO plans outlining the ROW User’s proposed use of the Public Rights of Way and without first obtaining from the City approval of those plans. All such plans shall be submitted to the MSO a minimum of 21 days before the proposed use of the Public Rights of Way.

(c) A ROW User’s use of the Public Rights of Way shall, in all matters, be subject and subordinate to the City’s use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the residents and visitors of the City. A ROW User shall coordinate the placement of its Facilities in a manner that minimizes adverse impacts on Public Improvements, as reasonably determined by the City. Where placement is not otherwise regulated by the City, a ROW User shall locate Facilities in the Public Rights of Way with adequate clearance from such Public Improvements so as not to affect the Public Improvements.
(d) As reasonably necessary, a ROW User shall relocate or adjust its Facilities located in a Public Right of Way for a Public Project. Unless the ROW User’s Agreement expressly provides otherwise, such relocation or adjustment shall be performed by the ROW User, at its sole cost and expense, without any cost or expense to the City and shall be subject to the rules and regulations of the City. The ROW User shall, if no time is provided for in the Agreement, have 90 days after notice is given by the City within which to relocate or adjust its Facilities. Upon a showing of good cause, the City Engineer may extend the period of time within which a ROW User must relocate or adjust its Facilities.

(e) It shall be the sole responsibility of a ROW User to take adequate measures to protect and defend its Facilities in the Public Rights of Way from harm and damage. Additionally, the ROW User must be a member of Kansas One-Call.

(f) A ROW User shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way and shall provide that information to the City upon request.

(g) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by a ROW User, while performing work in the Public Rights of Way, shall be fully repaired or replaced to their original condition within a reasonable time by the ROW User at its sole cost and expense and to the reasonable satisfaction of the City.

(h) All use of the Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be signed, barricaded, and otherwise safeguarded. In providing such signs, barricades, and other safeguards, the ROW User shall comply with its traffic control plan, the Manual for Uniform Traffic Control Devices (MUTCD), and all City policies, Administrative regulations promulgated pursuant to Article 8 of this Chapter, rules, and orders regarding the placement of signs, barricades, and other safeguards.

(i) In connection with the construction, reconstruction, location, relocation, maintenance, repair, or operation of its Facilities in the Public Rights of Way, a ROW User shall comply with the provisions of the City’s Street Tree Ordinance, Chapter 18, Article 1, of the City Code, as amended, regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

(j) To the extent possible, a ROW User shall, in accordance with Chapter 5, Article 19 of the City Code, as amended, construct or locate its Facilities underground. Before a ROW User may employ any overhead or aboveground Facilities, it must comply with the terms of the Agreement or receive the prior written consent of the City. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed and maintained by the ROW User pursuant to City ordinances and at the ROW User’s sole cost and expense.
(k) No ROW User shall use above-ground markers or appurtenances related to its Facilities located in the Public Rights of Way, without first seeking written approval of the City. All above-ground markers or appurtenances shall comply with City rules, regulations, and conditions, including those of the Conservation of Historic Resources Code, Chapter 22 of the City Code, as amended. Any such above-ground markers or appurtenances so placed shall be unobtrusive.

16-906 HEIGHT RESTRICTIONS.

(a) In order to protect the health, safety, and welfare of the community, as well as its aesthetics, no new pole, tower, or other above-ground Facility located by a ROW User in the Public Rights of Way shall, unless otherwise first approved by the City in writing, exceed the lesser of:

(i) 35 feet (35') for residential or collector streets;

(ii) 45 feet (45') for arterial streets; or

(iii) 72 inches (72") above the height of existing light poles or other poles along the Public Right of Way wherein the Facility is located.

(b) The foregoing shall not apply to any existing pole, tower, or other above-ground Facility located in the Public Rights of Way prior to January 1, 2020. Any pole, tower, or other above-ground Facility in place prior to January 1, 2020, may be replaced or reconstructed to its existing height as of January 1, 2020.

16-907 SHARING SPACE.
Due to the limited amount of space available in the Public Rights of Way, the City strongly encourages all ROW Users to share space and Facilities when possible. For that reason, all ROW Users are encouraged to co-locate Facilities on existing infrastructure when possible.

16-908 ACCESS TO INFORMATION.
In determining the amount of fees due and owing to the City under an Agreement hereunder, a ROW User shall use commercially reasonable efforts to ensure the accuracy of all records and submissions, including fee payments. A ROW User shall, upon written request of the City, make all books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying the ROW User's accounting. The City shall bear the costs of any such audit, unless, however, the audit discloses that the ROW User owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, the ROW User shall be responsible to the City for the reasonable costs of the audit in addition to any money due and owing to the City under this Article.
TAXES.
A ROW User shall be solely responsible for the payment of all applicable taxes, 
<em>ad valorem</em> taxes, property taxes, fees, assessments, or other impositions levied 
on the ownership, use, and maintenance of its Facilities located in the Public 
Rights of Way.

REMOVAL OF FACILITIES.
Upon the termination, for whatever reasons, of any Agreement governed by this 
Article, a ROW User shall remove its Facilities from the Public Rights of Way within 
a reasonable time after such termination. It shall be the duty of a ROW User, 
immediately upon removal of its Facilities, to restore the Public Rights of Way from 
which said Facilities are removed to as good condition as the same were before 
said removal was effected and without any cost to the City.

ABANDONED FACILITIES.

(a) A ROW User owning Abandoned Facilities in the Public Rights of Way, 
must:

(1) Remove the Abandoned Facilities and replace or restore any 
damage or disturbance caused by the removal at its sole cost and 
expense. The City may allow underground Facilities or portions 
thereof to be abandoned in place if the City determines that it is in 
the best interest of the public safety to do so. At such time, the City 
may, at its discretion, take ownership of such Abandoned Facilities 
abandoned in place;

(2) Provide information to the City's satisfaction that the ROW User's 
obligations for the Abandoned Facilities have been assumed by 
another authorized ROW User; or

(3) Submit to the City a proposal and instruments for transferring 
ownership of the Abandoned Facilities to the City. If the ROW User 
proceeds under this subsection, then the City may either accept the 
Abandoned Facilities, require the ROW User to remove the 
Abandoned Facilities, or require the ROW User to post a bond 
sufficient to reimburse the City for the reasonable anticipated costs 
of removing the Abandoned Facilities.

(b) Facilities of a ROW User, who fails to comply with subsection (a), and 
whose Facilities remain unused for a period of two years, shall be deemed 
Abandoned Facilities, unless, after the City has made a good faith effort to 
contact the ROW User, the ROW User establishes to the satisfaction of the 
City that the Facilities are not Abandoned Facilities.

(c) Abandoned Facilities are hereby determined to be a nuisance. The City 
may exercise any remedies or rights that it has at law or in equity, including 
but not limited to:
(1) abating the nuisance, and then seeking restitution therefor from the
ROW User that abandoned those Facilities;

(2) taking possession and ownership of the Abandoned Facility and
restoring it to use; or

(3) requiring the ROW User, by injunction or otherwise, to abate or
remove the nuisance.

16-912 VACATION OF PUBLIC RIGHTS OF WAY.

(a) If the City vacates a Public Right of Way which contains Facilities of a
Service Provider and if the vacation does not require the relocation of the
Service Provider’s Facilities, then the City shall reserve to and for itself and
all Service Providers having Facilities in the vacated Public Right of Way,
an easement for the right to install, maintain, and operate said Facilities
and to enter upon such easement at any time for the purpose of
reconstructing, inspecting, maintaining, or repairing the same.

(b) If the City vacates a Public Right of Way which contains Facilities of a
Service Provider, if the vacation requires the relocation of the Service
Provider’s Facilities, and

(1) if the vacation proceedings are initiated by the Service Provider,
then the relocation costs shall be borne by the Service Provider.

(2) if the vacation proceedings are initiated by the City, then the
relocation costs shall be borne by the Service Provider unless the
City and Service Provider agree otherwise in writing.

(3) if the vacation proceedings are initiated by a Person other than the
Service Provider, then the relocation costs shall be borne by the
Person requesting the vacation.

16-913 UNLAWFUL ACTS.

(a) It shall be unlawful for any Person to locate private Facilities in the Public
Rights of Way on more than a Temporary basis without the prior written
consent of the City, either through an Agreement or other arrangement with
the City.

(b) It shall be unlawful for any Person to violate any provision of this Article.

16-914 MUNICIPAL OFFENSE.
Engaging in any of the unlawful acts set forth at Section 16-913 shall be a
municipal offense. Each violation shall constitute a separate municipal offense.
Each day of violation shall also constitute a separate municipal offense. Any
violation of Section 16-913 shall, upon an adjudication of guilt or the entry of a plea
of no contest, be subject to a minimum fine of $2,000.00 and a maximum fine of
$2,500.00 for each municipal offense.
SECTION 3. If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 4. After passage, approval, and publication, as provided by law, this ordinance shall be in full force and effect commencing January 1, 2020.

PASSED by the Governing Body of the City of Lawrence, Kansas, this 18th day of June, 2019.

APPROVED:

Lisa Larsen, Mayor

ATTEST:

Sherri Riedemann, City Clerk

APPROVED AS TO FORM:

Toni R. Wheeler, City Attorney
ORDINANCE NO. 9682

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, REPEALING EXISTING CHAPTER 16, ARTICLE 9A AND ENACTING, IN ITS PLACE, CHAPTER 16, ARTICLE 9A OF THE CODE OF THE CITY OF LAWRENCE, KANSAS, 2018 EDITION, AND AMENDMENTS THERETO, PERTAINING TO FRANCHISEES’ PRIVATE FACILITIES LOCATED IN PUBLIC RIGHTS OF WAY.

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

SECTION 1. Existing Chapter 16, Article 9A, of the Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent of the Governing Body that Section 2 of this Ordinance supersedes it.

SECTION 2. The Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby amended by adding Chapter 16, Article 9A, which reads as follows:

ARTICLE 9A. FRANCHISEES’ PRIVATE FACILITIES LOCATED IN PUBLIC RIGHTS OF WAY

16-9A01 PURPOSE.
The Governing Body finds that, in order to advance the health, safety, and welfare of the residents of the City of Lawrence, Kansas, it is necessary to regulate certain activities, including franchisees' location of private facilities in public rights of way.

16-9A02 APPLICABILITY.
This Article shall apply to those franchisees of the City of Lawrence, Kansas, that have no Right of Way use provisions in their contract franchise or franchise ordinance with the City, or that have Right of Way use provisions that are less stringent than those set forth in Article 9 of the City Code.

16-9A03 FRANCHISEES’ LOCATION OF PRIVATE FACILITIES IN PUBLIC RIGHTS OF WAY. In locating private Facilities in the Public Rights of Way, all franchisees shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers. In addition, in locating private Facilities in the Public Rights of Way, all franchisees shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, fees, sidewalk and pavement cuts, location and relocation of Facilities, construction coordination, beautification, tree care, above-ground markers, Complete Streets policies, and the like. Furthermore, all franchisees shall be subject to the provisions of Chapter 16, Article 8 of the City Code, as amended, governing Temporary uses of the Public Rights of Way, and Chapter 16, Article 9 of the City Code, as amended, governing private Facilities located in the Public Rights of Way on more than a Temporary basis.

SECTION 3. If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.
SECTION 4. After passage, approval, and publication, as provided by law, this ordinance shall be in full force and effect commencing January 1, 2020.

PASSED by the Governing Body of the City of Lawrence, Kansas, this 18th day of June, 2019.

APPROVED:

Lisa Larsen, Mayor

ATTEST:

Sherri Riedemann, City Clerk

APPROVED AS TO FORM:

Toni R. Wheeler, City Attorney