

ORDINANCE 16-1

MCPHERSON COUNTY HIGHWAY UTILITY CROSSING ORDINANCE

An Ordinance for Permitting Requirements for Utilities Crossing Highways Under McPherson County Jurisdiction:

WHEREAS, transportation, communications, and utility networks are growing in complexity, which include highways, railways, and waterways at the surface; subways, pipelines, and cables below the surface; communication lines and transmission lines above the surface; and wireless communication systems; and,

WHEREAS, the possibility of two or more networks occupying a common right-of-way or intersecting increases as the networks grow, and, problems may arise due to the construction, maintenance, and operations of one network affecting the others; and,

WHEREAS, it is in the public interest for utility facilities to be accommodated on highway rights-of-way when such use and occupancy do not adversely affect highway safety, construction, maintenance, or operations; and,

WHEREAS, in this respect, guidelines outlining safe and rational practices for accommodating utilities within highway rights-of-way are of valuable assistance to transportation agencies, and;

WHEREAS, it is in the best interest of the County in order to develop and preserve safe highway operations and roadsides that standard guidelines and permitting processes be put in place; and,

THEREFORE, BE IT ORDAINED BY THE MCPHERSON COUNTY COMMISSION:

Section 1: DEFINITIONS AND SCOPE

(a) The term "utility facility" as used in this ordinance includes all public and private utilities, including but not limited to, electric power, communications, cable television, water, gas, oil, slurry, petroleum products, steam, sanitary sewers, wireless facilities (towers), public and private drainage systems, irrigation, and all other facilities that are similar to those contained within in these policies.

(b) The term "right-of-way" or "highway right-of-way" as used in this ordinance includes only those under the jurisdiction of the McPherson County Highway Department, unless otherwise indicated.

(c) The term "public government applicants" as used in this ordinance includes the United States government, State of South Dakota, municipalities, counties, and townships that are applicants for a permit pursuant to this Ordinance.

Section 2: AUTHORITY OF SUPERINTENDENT TO PROMULGATE CRITERIA

(a) The County Highway Superintendent is hereby granted the authority to promulgate criteria, rules, and forms for the permitting of utility facilities within the right of way of any highway under the jurisdiction of the County. These criteria and rules shall be promulgated in the form of a policy document that shall define all criteria and rules applicable to the permitting of such utility installations, relocations, or expansions within County highway rights-of-way.

(b) Any criteria, rules, and forms promulgated by the County Highway Superintendent under this section, including any proposed revisions of the same, must be approved by resolution of the County Commission before becoming effective.

(c) Any criteria, rules, and forms so promulgated by the County Highway Superintendent and approved by the County Commission by resolution shall be compiled as a policy document in guidebook form and shall be placed on file with the County Auditor, with the County Highway Department, and at other publicly accessible locations at the discretion of the Superintendent.

(d) Criteria, rules, and forms so promulgated in the manner required by this section that are not inconsistent with the provisions of this Ordinance shall have the same force and effect of the provisions of this Ordinance.

Section 3: PERMIT REQUIRED

(a) Before the installation, relocation, or expansion of any utility facility may be made within any highway right of way under the jurisdiction of the County, the owner of a utility shall submit an application to the County Highway Superintendent for a utility permit allowing for such installation, improvement, maintenance, relocation, or expansion. The application for said permit shall be in a form promulgated by the Superintendent pursuant to Section 2 of this Ordinance.

(b) The Superintendent may grant, grant with modifications or conditions, or deny a permit application based on the requirements of this Ordinance and the criteria and rules promulgated by the Superintendent pursuant to Section 2 of this ordinance.

(c) Any installation, relocation, or expansion of a utility facility made by the owner must be done in accordance with all conditions of the permit as granted by the Highway Superintendent.

(d) Permits granted pursuant to this Ordinance may be revoked by the Superintendent upon a written finding that any of the criteria or rules applicable to such permits have in fact been violated, or that any of the conditions placed upon a permit have been violated or otherwise not fulfilled.

(e) Any person or entity aggrieved by a decision of the Superintendent to grant, grant with conditions, deny, or revoke a permit pursuant to this Ordinance may appeal the decision by providing written notice of said appeal to the County Auditor, County Highway Superintendent, and County Commission Office within five (5) working days of the Superintendent's decision. The County Commission shall hear all such appeals as an agenda item at one of its regular meetings. The County Commission shall review the Superintendent's decision for abuse of discretion and shall vote to uphold, uphold with modification, or reverse the Superintendent's decision.

Section 4: PERMIT FEES

(a) The County Highway Superintendent may set a fee for the issuance of permits under this Ordinance. Any such fee shall be set and published in the criteria guidebook promulgated by the Superintendent under Section 2 of this Ordinance.

(b) No permit application may be granted under this chapter unless the applicable permit fee is paid in full or is otherwise exempted under this Ordinance.

(c) Such fees are waived for public government applicants.

Section 5: BONDING

(a) The County Highway Superintendent may, as a condition of granting a permit pursuant to this Ordinance, require a performance bond be furnished by the applicant if not otherwise required by law.

Section 6: VIOLATIONS AND PENALTIES

(a) Any violation of this ordinance may be punished as a Class 2 misdemeanor, with the maximum penalties for such violation defined by SDCL 22-6-2(2), in accordance with SDCL 7-18A-2. Restitution to return the highway to the condition it was in before work was performed in violation of this ordinance may also be required pursuant to SDCL Ch. 23A-28. Each and every day that such violation continues may constitute a separate offense.

(1) At the time of adoption, this penalty as defined by SDCL 22-6-2(2) is a maximum fine of five hundred dollars (\$500.00) and maximum thirty (30) days imprisonment in the county jail. However, it is the intent of this ordinance to provide for the maximum penalty allowed by law as defined by SDCL 22-6-2(2) at the time of the offense.

(b) In addition, any violation of any the provisions of this Ordinance or of the criteria and rules promulgated pursuant to this Ordinance may be considered cause for denial of a permit or the revocation of an existing permit issued pursuant to this Ordinance, as well as the consequences of such denial or revocation for non-compliance specified in this Ordinance or in the criteria and rules promulgated pursuant this Ordinance.

(c) If a performance bond is required for the project pursuant to Section 5 of this Ordinance or other provision of law, the County may assert a claim against such bond for any unreasonable lengthy loss of public service and for any remedial work required to place the highway in the same or similar condition as it was in before the commencement of work by the permit holder, if the permit holder fails to remedy the highway itself in a timely manner consistent with the requirements of the permit.

First Reading: March 1st, 2016

Second Reading: April 5th, 2016

Published: April 12th, 2016

Effective Date: May 3rd, 2016

RICK BEILKE

Rick Beilke

Chairman of the Board of County Commissioners

ATTEST:

JENNIFER GUTHMILLER

Jennifer Guthmiller

McPherson County Auditor