



Sedgwick County...  
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# Sedgwick County

525 North Main Street 3rd  
Floor  
Wichita, KS 67203

## Legislation Text

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### **A RESOLUTION TO AMEND CHAPTER 22, ARTICLE II OF THE SEDGWICK COUNTY CODE REGARDING UTILITY PERMITS TO COMPLY WITH NEW STATE LEGISLATION REGARDING WIRELESS TELECOMMUNICATIONS.**

Presented by: Justin M. Waggoner, Assistant County Counselor.

**RECOMMENDED ACTION:** Approve and sign the resolution.

#### PUBLIC COMMENT

Within Senate Substitute for House Bill No. 2131, the Kansas legislature enacted legislation that significantly modifies wireless telecommunications and allows wireless telecommunications facilities to be located within the public rights-of-ways of municipalities. The new law is codified as K.S.A. 66-2019 and goes into effect on October 1, 2016. Up until this time, Sedgwick County has not allowed wireless facilities to be located within the public right-of-way, and these wireless towers and other facilities have instead been located outside of the public right-of-way and on private property where property owners would lease their ground in order for the towers to locate on their property.

The stated aim of the new legislation is to broadly enable the citizens and businesses of Kansas to access broadband services. The new legislation states that the rights of wireless telecommunications providers to locate within the public right-of-way "shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority [Sedgwick County, in this case]." It should also be noted that the provisions of the Wichita-Sedgwick County Unified Zoning Code do not apply to property located within the public right-of-way.

The new Kansas legislation on wireless telecommunications contains a number of provisions regarding what municipalities can and cannot do under this legislation. The key items that are pertinent to this agenda item are listed below:

- (1) Sets timelines for approval or denial of applications to locate wireless telecommunications facilities in the public right-of-way such that the application is deemed approved if it is not otherwise denied within the established timeframe;
- (2) Requires municipalities to state with specificity why a decision has been made regarding the application;
- (3) Generally prohibits a municipality from treating wireless telecommunications any less favorably than other public utilities;
- (4) Limits fees that a municipality can charge for reviewing an application for constructing a wireless facility;

- (5) Provides a list of 18 items municipalities cannot ask or require within their application forms for wireless facilities; and
- (6) Multiple other specific restrictions upon the regulations that municipalities may enact that pertain to wireless telecommunications structures.

As a result of this new legislation, a resolution has been drafted with the following key aims and attempting to balance the following considerations: (a) comply with the new statute; (b) protect the public health, safety, and welfare; (c) avoid potential liability to the County, whether from a telecommunications provider or a third party; and (d) take into account other public utilities that are located within the public right-of-way.

The County already has a process for public utilities to obtain permits in the public right-of-way, which has remained largely unchanged since 1982. This resolution proposes to amend that process by bringing wireless telecommunications facilities under the umbrella of utility permits. The resolution also establishes minimum guidelines and references national transportation safety standards with regard to where these wireless telecommunications facilities would be allowed, subject to determination by the County Engineer.

Highway permits are also covered within this same portion of the County Code. However, they are unaffected by the new legislation, with the exception of a portion of the resolution that proposes to increase the fee for both utility and highway permits from their current rate of \$65.00, which has been in place since 1982, to \$150.00, based upon the substantial Public Works staff time that is involved on each application.

If this resolution is approved, it would become effective on October 1, 2016.

Alternatives: To not approve the resolution or modify the resolution.

Financial Considerations: There are no additional costs to the County based on adoption of this resolution.

Legal Considerations: The change in law becomes effective on October 1, 2016, so the passage of a resolution on this topic is highly recommended. The County has the authority to make these changes pursuant to K.S.A. 19-101 et seq. Approval is by simple majority vote.

Policy Considerations: N/A

Outside Attendees: None

Multimedia Presentation: N/A