

ORDINANCE NUMBER 1545

AN ORDINANCE PERTAINING TO THE MANAGEMENT OF THE USES OF RIGHT-OF-WAYS IN THE CITY OF GOODLAND, KANSAS.

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

Section 1. Definitions.

(a) "Public right-of-way" means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

(b) "Occupant" means any person, firm, corporation, association, utility, or entity, which enters upon the right-of-way of the City, or in any manner establishes a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto. Occupant shall not include the following:

(i) any person, firm, corporation, association, or entity installing, constructing, maintaining or operating an installation governed by Chapter 4, Article IV, of the Code of the City of Goodland, KS. Nothing herein shall exempt any person, firm, corporation, association or entity from complying with Chapter of the Code of the City of Goodland, KS.

(ii) any person, firm, corporation, association, or entity installing, constructing, or maintaining a fence governed by Chapter 4, Article VIII, of the Code of the City of Goodland, KS. Nothing herein shall exempt any person, firm, corporation, association or entity from complying with Chapter of the Code of the City of Goodland, KS.

(iii) any person, firm, corporation, association, or entity installing, constructing or maintaining residential landscaping. "Landscaping" means the treatment of the ground surface with live planting materials, including but not limited to, trees, shrubs, grass, ground cover or other growing horticultural material. Other materials such as wood chips, stone, or decorative rock may also be utilized.

Section 2. Authorization From City Required.

(a) No person, firm, corporation, association, utility, or entity, shall enter upon the right-of-way to the City, or in any manner establish a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto, without the express written permission of the City. The permission of the City may be granted by a franchise agreement pursuant to the provisions of K.S.A. 12-2001 et seq. or by such other agreement as the governing body determines best protects the public interest in the right-of-way.

(b) Nothing in this ordinance shall be interpreted as granting an occupant the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(c) The city shall process

each valid and administratively complete application for use of the right-of-way within 30 days.

Section 3. Health, Safety, and Welfare Regulations.

The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city.

Section 4. Specific Portions of Right-of-Way Restricted.

(a) The city hereby prohibits the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following: (1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers; (2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality; (3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or (4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

(b) If the city denies a request to use or occupy a specific portion of the public right-of-way, the requester shall be served a notice of such denial by first class mail. The notice shall indicate that the requester shall have 10 days from the date of receipt of the notice to request a public hearing by the city governing body concerning the denial. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the denial before the governing body. The hearing shall be held by the governing body within 30 days after the filing of the request therefore, and the potential occupant shall be advised by the city of the time and place of the hearing. Following the public hearing, if the city governing body denies a potential occupant's request to use or occupy a specific portion of the public right-of-way, such determination may be appealed to district court.

Section 5. Compliance With, Manual of Uniform Traffic Control Devices.

Any occupant of the public right-of-way shall comply with the provisions of Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), published by the U.S. Department of Transportation, Federal Highway Administration, 1988 Edition, Revision 3, dated September 3, 1993, which is incorporated herein by reference as if fully set forth herein.

Section 6. Additional Requirements.

The City shall have the right to control placement of facilities within the public right-of-way so as to not interfere with fa-

cilities already existing in the public right-of-way and with future plans for use of the public right-of-way by the city.

Section 7. Emergencies.

If there is an emergency necessitating response work or repair, any person, firm, corporation, association, utility, or entity which has been granted permission to occupy the public right-of-way may begin that repair or emergency response work or take any action required under the circumstances, provided that the person, firm, corporation, association, utility, or entity notifies the city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

Section 8. Repair.

Any occupant of the public right-of-way is hereby required to repair all damage to a public right-of-way caused by the activities of that occupant, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the occupant fails to make the repairs required by the city, the city may effect those repairs and charge the occupant the cost of those repairs.

Any occupant of the public right-of-way is hereby required to repair any and all damage to any facilities maintained by the city or facilities of any other occupant of the public right-of-way caused by the activities of that occupant, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the occupant fails to make the repairs required by the city, the city may effect those repairs and charge the occupant the cost of those repairs.

In restoring the right-of-way, the occupant guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months the occupant shall, upon notification from the City, correct all restoration work to the extent necessary, using any method as required by the City. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from City. In the event the occupant is required to perform new restoration pursuant to the foregoing guarantee, the City shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration. The twenty-four (24) month guarantee period shall be applicable to failure of the surface as well as failure below the surface. Payment of an excavation fee shall not relieve the occupant of the obligation to complete the necessary right-of-way restoration.

The occupant responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual on Uniform Traffic Control Devices and any applicable federal or state requirement.

If an excavation cannot be back-filled immediately and left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as re-

quired, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

Section 9. Relocation.

Whenever requested by the city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, an occupant promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such occupant's failure to timely relocate or adjust its facilities shall be borne by such occupant.

Section 10. Fees.

The following fees shall be assessed against occupants of the public right-of-way:

(a) A permit fee of \$2.00 per opening

(b) an excavation fee of \$2.00 plus \$.10 per foot of ditch or trench opening for each street or pavement cut.

(c) Repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, and/or subcontractors in the right-of-way; and

(d) A performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

Section 11. Indemnity.

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

(b) The indemnity provided by this subsection 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 this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law.

(c) 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.

Section 12. Claim Notification. An occupant shall promptly advise the other in writing of any known claim or demand against the provider or the city related to or arising out of the occupant's activities in a public right-of-way.

Section 13. Penalty Provision. Any person, firm, corporation, association, utility, or entity, or agent, contractor or subcontractor thereof, violating any provision of this article, shall be guilty of a municipal offense, and shall upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute

a separate and distinct offense.

Effective date. This ordinance shall take effect and be in force from and after its publication in the Goodland Star- News.

PASSED AND APPROVED by the Governing Body of the City of Goodland, Kansas, on this 17th day of April, 2006.

Notice Concerning Proposed Kansas Air Quality Construction Permit and Public Hearing

Notice is hereby given that the Kansas department of Health and Environment (KDHE) is soliciting comments regarding a proposed air quality construction permit. E Caruso, LLC, has applied for an air quality construction permit in accordance with the provisions of K.A.R. 28-19-300 to construct a 20 million gallon per year of fuel grade ethanol (ethanol alcohol) plant. Emissions of particulate matter (PM), PM with an aerodynamic diameter less than or equal to 10 microns (PM10), volatile organic compounds (VOCs), and hazardous air pollutants (HAP's) were evaluated during the permit review process.

E Caruso, LLC. 1206 Main, Goodland, KS 67735, owns and operates the stationary source located at County road 14 and state Highway 24, Goodland, KS 67735, at which a new ethanol plant is to be constructed.

A public comment period has been established to allow citizens the opportunity to express any concerns or comments they may have about this permitting action. The public comment period is to begin on April 20, 2006 and end on May 22, 2006. **A public hearing is tentatively scheduled by the Kansas Department of Health and Environment (KDHE) at the City Hall - Commission Room in Goodland, KS, 67735, 204 W. 11th Street on May 23, 2006 starting at 7:00 PM (mountain Time) to receive comments on the proposed issuance of the draft air quality construction permit.** All comments should be submitted in writing to Jennifer Burgdorfer, Bureau of Air and Radiation, 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366 or at the public meeting.

Rick Billinger, Mayor  
ATTEST:  
City of Goodland, Kansas

Mary P. Volk, City Clerk

Published in The Goodland Star-News on Friday, April 21, 2006.

Requests to speak at the public hearing should be sent to the attention of Ms. Sherry Walker at the address listed above or by FAX to (785) 291-3953 and must be received by noon on Monday, May 22, 2006. **If no requests to speak at the public hearing are received by this date and time, then the public hearing will be canceled.** For more information concerning the hearing, please call the Bureau of Air and Radiation's Permitting Unit at (785) 296-1570. KDHE will accept written comments regarding this permit until the end of business on May 22, 2006. Written comments do not have to be submitted at a public hearing.

A copy of the proposed permit, permit application, all supporting documentation, and all information relied upon during the permit application review process are available for public review for a period of 30 days from the date of publication during normal business hours (8:00 AM to 5:00 PM) at the KDHE Bureau of Air and Radiation (BAR), 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366. Also a copy of the proposed permit only can be reviewed, at the KDHE Northwest District Office, 2301 East 13th Street, Hays, Kansas 67601. To obtain or review the proposed permit and supporting documentation, contact Jennifer Burgdorfer, (785) 296-1581 at the central office of the KDHE and to review the proposed permit only, contact Rick Robinson at (785) 625-5663 at the KDHE Northwest District Office. The standard departmental cost will be assessed for any copies requested.

Roderick L. Bremby, Secretary  
Kansas Department of Health and Environment

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## Sunflower Contest

### RULES

- Write down as many words (at least 3 letters) that you can think of using the word "Nutrient"
  - Do not use proper names
- Bring your completed list to The Goodland Star- News office at 1205 Main or at our booth at the Fair by 12:00 p.m. by Monday, August 14th

Winner will be announced in the Friday, August 18th edition

1. _____	26. _____
2. _____	27. _____
3. _____	28. _____
4. _____	29. _____
5. _____	30. _____
6. _____	31. _____
7. _____	32. _____
8. _____	33. _____
9. _____	34. _____
10. _____	35. _____
11. _____	36. _____
12. _____	37. _____
13. _____	38. _____
14. _____	39. _____
15. _____	40. _____
16. _____	41. _____
17. _____	42. _____
18. _____	43. _____
19. _____	44. _____
20. _____	45. _____
21. _____	46. _____
22. _____	47. _____
23. _____	48. _____
24. _____	49. _____
25. _____	50. _____

(If you have more than 50, please attach an additional sheet)

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Age \_\_\_\_\_

Winner of the Sunflower Contest will receive a FREE 1 year subscription to:

The Goodland Star-News