

# FLAGS ON HIGHWAY RIGHT OF WAY POLICY



Effective Date May 1, 2016

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## 1. Purpose and Authority

- a. Under K.S.A. 68-404 the secretary of transportation ("Secretary") of the Kansas Department of Transportation (KDOT) has responsibility for and supervision over all state highways and bridges in the state, and under K.S.A. 68-413b the Secretary may authorize uses of highway rights of way as will not interfere with public travel thereon and which are in conformity with applicable state and federal laws rules and regulations relating to highways.
- b. The Secretary recognizes the importance of the flags of the United States of America, the State of Kansas, and the military branches of the United States (collectively referred to as "Flags"), to the people of this state, and authorizes Local Governmental Authorities to apply for permits to display such flags within KDOT highway right of way under conditions which, in the discretion of the Secretary, will not jeopardize the safety of the traveling public or compromise the integrity of any highway structure.

## 2. Definitions

- a. "Event" means a federal or state observed holiday including Kansas Day, Armed Forces Day (third Saturday in May) Memorial Day, Flag Day, 4<sup>th</sup> of July, Labor Day, Navy Day (October 27<sup>th</sup>), and Veteran's Day. An Event may also include a temporary display during military funerals or to welcome service-members home from deployments. A city or county is responsible to approve those Events (falling within this definition) during which Flags can be displayed.
- b. "Flags" collectively means any or all of the following: Kansas Flag (the official state flag under K.S.A. 73-702), U.S. Flag (as described in the United States Flag Code codified at 4 U.S.C. § 1, *et seq.*), or Military Flags (official flags of the five service branches of the United States Armed Forces: the Army, Marine Corps, Navy, Air Force, and Coast Guard).
- c. "In-Ground Holder" means a permanently installed in-ground pole, or a sleeve installed in the ground for temporary installation of flag poles, on state highway right of way in close proximity to the end of a state highway bridge to allow Flags to be temporarily displayed during specified Events.
- d. "Permit" means a Highway Permit issued by KDOT granting permission from the Secretary for the city or county to authorize flag displays utilizing In-Ground Holders under conditions set forth in the Permit and in this Policy.

## 3. Mounting or Displaying Flags on Bridges.

Flags mounted on a state highway bridge present numerous engineering concerns relating to the integrity of the bridge structure, as well as issues relating to the safety of the traveling public. Flags flown on the superstructure of bridges can interfere with line of sight, obstruct traffic signs or other traffic control devices, create unsafe proximity to vehicles due to interference with horizontal or vertical clearance standards, can cause the established speed and volume of bridge traffic to become unsafe, can distract drivers, flag poles could break, or become loose and fall, injuring passing motorists or creating other safety hazards, and create dangerous conditions for persons installing and removing flags on bridges. In addition, flags draped from bridges over traveled lanes or traveled areas of highways, walkway, bikeway, railroads or navigable waters create additional hazards for travelers.

KDOT's available resources are not sufficient to allow the agency to perform the extensive engineering and traffic analyses necessary to evaluate these issues where citizens may want flags flown on KDOT-owned bridges. **For these reasons, KDOT has determined that after January 1, 2016, no requests for mounting or displaying flags from state highway bridges will be accepted for review or will be approved.**

State highway bridges on which flags were mounted for display by local groups prior to December 31, 2015, shall be grandfathered under this policy. In no other event are flags to be allowed to be displayed or flown however mounted or affixed on state, interstate or freeway bridges, or draped over and attached to the outside structure of the bridge, in contravention of this policy.

#### **4. Permit for In-Ground Displays of Flags.**

- a. A City or County may apply for a Permit from KDOT on Form No. 304<sup>1</sup> to allow installation of In-Ground Holders on right of way in close proximity to each end of a state highway bridge to allow flag displays during designated Events. A representative of the City/County should meet with KDOT Area personnel to identify acceptable locations for placement of In-Ground Holder. The locations should be in as close proximity as possible to the end of the bridge structure, in accordance with the following conditions:
  - (1) The locations should be beyond the designated clear zone of the highway or as far as possible behind barriers such as guardrail. In no event may a pole location be established less than four feet behind the barrier.
  - (2) In cases where the width of the Right of Way is less than clear zone distance, the locations shall be within one foot from the outside Right of Way boundary.
  - (3) The location should minimize the potential for interference with traffic should the flag pole fall.
- b. Poles shall not exceed 25 feet in height. The size of flags used should be in proportion to the height of the pole, and be of an "all weather" design/material to facilitate displays in inclement weather.
- c. The Permit application should specify the type of In-Ground Holder to be installed, dimensions of pole, and should be accompanied by appropriate drawings and specifications. Permanently installed flag poles shall conform to industry standards such as the ANSI/NAAMM "Guide Specification For Design of Metal Flagpoles," FP 1001-07.<sup>2</sup> Any plans for landscaping at the base of the pole(s) or for providing lighting for flags to be flown at night should also be submitted with the application.
- d. Permit holder shall maintain the vegetation around the flag pole to the extent necessary to allow KDOT to maintain the surrounding area with its standard mowing equipment. KDOT shall not be responsible for any damage to In-Ground Holders caused by KDOT maintenance on the right of way or mowing areas surrounding the In-Ground Holders.

#### **5. General Permit Requirements.**

- a. Permits will not be issued to individuals or groups for displaying Flags on state highway right of way. Individuals or groups must submit a request to a city or county to apply to KDOT for a permit to allow the City/County to authorize display of flags within its geographical jurisdiction.
- b. By issuance of a Permit, KDOT is allowing a City/County to authorize the use of state right of way within the geographical jurisdiction of the City/County for installation of an approved In-Ground Holder

<sup>1</sup> Available online at [http://www.ksdot.org/Assets/wwwksdotorg/DOT\\_304\\_Hwy\\_permit.pdf](http://www.ksdot.org/Assets/wwwksdotorg/DOT_304_Hwy_permit.pdf).

<sup>2</sup> Available online at: [https://www.naamm.org/landing\\_pages/FP\\_1001-07.pdf](https://www.naamm.org/landing_pages/FP_1001-07.pdf).

for flag displays. The City/County retains authority and discretion to authorize flag displays consistent in accordance with the terms of this Policy and of the issued Permit.

- c. The City/County shall supervise and have full responsibility for any display of flags authorized by the City/County under a Permit. The City/County shall indemnify the Secretary and KDOT from any and all liability, loss or damage related to, caused by (directly or indirectly), or otherwise arising out of installation of any In-Ground Holder or a Display authorized by the Local Body under a Permit.
- d. The City/County is responsible to undertake all appropriate safety measures during the installation and maintenance of In-Ground Holders, and/or the actual installation and removal of Flags for approved display of flags. Safety measures should include providing traffic control measures and appropriate supervision in accordance with the Permit provisions.
- e. The cost of installing In-Ground Holders, Flags and poles, and of resources, personnel and traffic control necessary for the safe installation and removal of Flags for displays shall be the responsibility of the City/County. In no event shall KDOT commit any resources or funding for costs or expenses related to display of flags under this Policy.
- f. Permits issued under this Policy shall generally be for a term of five years, at which time they are subject to review by KDOT. At any time that KDOT determines the location of In-Ground Holders is needed for state highway purposes, the permit shall be terminated by KDOT and In-Ground Holders shall be removed by the City/County at its expense.

## 6. General Provisions

- a. To minimize distractions and potential impact to safety of travelers and bridge structures, a flags displayed for any Event shall be limited to a period of no more than three calendar days. Displays for military funerals and to welcome service members home from deployments shall be limited to one calendar day.
- b. U.S. Flags shall at all times be displayed in the position and manner consistent with the provisions of United States Flag Code found generally at 4 U.S.C. 4 U.S.C. § 7, *et seq.*<sup>3</sup> subject to practical constraints. U.S. Flags may only be flown at locations with sufficient existing lighting for 24 hour/day display, unless the flags are removed before sunset and not flown at night.

## 7. Limitations

- a. In no event shall flag displays of any type be allowed on Interstate Right of Way.
- b. KDOT may, at any time, terminate a Permit or revise the terms under which Flags can be displayed if safety concern arise and cannot be sufficiently addressed by the Local Body. KDOT may also place reasonable restrictions pertaining to the time, place, or manner of displaying Flags under this Policy necessary to protect public safety on the roadways.
- c. This Policy is limited to allowing Cities or Counties, via a Permit, to authorize the display of Flags on state highway right of way within the jurisdiction of the City/County for limited durations and purposes. This Policy is not intended to, nor shall be interpreted, as opening state highways or right of way as forums for public speech or commercial speech. The state highway is and shall remain a nonpublic forum.

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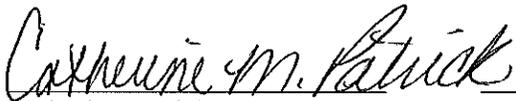
<sup>3</sup> Can be found online at <http://www.military.com/flag-day/us-flag-code.html>

- d. Any item placed in In-Ground Holders inconsistent with the terms of a Permit shall be removed by the City/County or by KDOT.

**8. Other Banners on Right of Way**

This policy does not apply to placement of temporary banners erected on highway right-of-way for locally sponsored events.<sup>4</sup>

**Approved:**

  
Catherine Patrick  
State Transportation Engineer

11-18-16  
Date

  
Larry Thompson  
Director of Operations

**Additional Rules for Grandfathered Flags Displayed on Bridges**

Grandfathered display of flags on state highway bridges will be allowed to continue so long as the process for mounting the flags does not change and the displays are conducted in compliance with the terms of KDOT's Policy for Flags on Right of Way dated May 1, 2016. The following additional rules shall also be followed:

- a. Due to the short length of poles and other safety considerations, Flags on grandfathered Bridges shall not be flown at "half-staff."
- b. Flags displayed on grandfathered Bridges should generally be no larger than 3 feet by 5 feet in size and be of an "all weather" design/material to facilitate display in inclement weather.
- c. U.S. Flags may only be flown on Bridges at locations with sufficient existing lighting for 24 hour/day display, unless the flags are removed before sunset and not flown at night. KDOT will not authorize the installation of lighting on Bridges to facilitate display 24 hour/day display of Flags.
- d. Appropriate safety measures shall be taken to ensure the safety of those involved in installation and removal of flags for Events. See, e.g., measures listed in Paragraph 5.d. of the Policy.

<sup>4</sup> This is controlled by Chapter 1`1, "Highway Permits," in the KDOT Highway Maintenance Manual.