



# Kansas LTAP Fact Sheet

A Service of The University of Kansas Transportation Center for Road & Bridge Agencies

## Getting Serious About Maintenance of the Right-of-Way

By Mike Brungardt, DeSoto City Engineer

*Survey results helped the City of De Soto craft a use and maintenance policy.*



This past Spring the City of De Soto (Ks.) formed an ad-hoc committee to review the City's policies and regulations about certain activities that take place within the City's rights-of-way (ROW). Primarily we were concerned with how best to regulate the use and maintenance of the ROW by individual property owners throughout the City. Also, City officials had become concerned about the safety hazards created by massive mailbox structures or other substantial landscaping improvements installed close to the roadway.

There were three main issues the committee wanted to address.

1) While De Soto City ordinances clearly regulate public improvements and utility excavations performed by professional contractors or franchise utility providers, we had no formal rule in place that establishes the expectations and responsibilities of everyday activities like trash pick-up, mowing, and landscaping typically performed by homeowners.

2) We had no written standards for the placement of landscaping improvements or the construction and location of mailboxes.

3) There has long been confusion about who owns and maintains private driveway approaches and culverts in De Soto. It became clear to city officials that a formal policy was needed to uniformly police these matters.

Concern about liability was a key factor in the City's

interest in developing a ROW maintenance policy. In most cases the ROW is owned by the city, and therefore the city has a legal responsibility to police and control the activities that take place within the ROW, including the part that lies outside of the traveled portion of the roadway. If a city (or county) allows an unsafe condition to persist within their right-of-way, even if that condition was not created by the local government that owns the ROW, legal liabilities exist.

One of the initial tasks of our committee was to gather information about the ROW maintenance policies and practices of other cities and counties throughout our region (Northeast Kansas). Through our research it became evident that there is a good deal of diversity among these entities about how to deal with these subjects. Predictably, counties differ from cities in several areas like mowing, weed control, and trash pickup. We also noted differences among the cities and among the counties on many topics.

We found it difficult to establish common trends among the agencies, and we found no good comprehensive source of information about what other agencies are doing statewide. In many cases it appeared that, like De Soto, other communities in our region lacked a formal written policy on these topics. As a result, current practices are the cumulative result of past decisions rather than a deliberate set of standards that reflect the policies of the local governing body or community as a whole.

### **ROW maintenance survey conducted**

In an attempt to obtain more complete information, we worked with Norm Bowers with the Kansas Association of Counties and Lisa Harris and Kristin Kelly with Kansas LTAP to create an on-line survey about ROW maintenance practices throughout the State. It included 49 questions on topics such as mowing, trash pickup, trees & landscaping, grading & excavations, mailboxes, driveway culverts & approaches, franchise & private utility work, and on-request traffic control devices. Invitations to participate in the survey were distributed to local road agencies throughout Kansas via the KS LTAP e-mail discussion list in May 2010. By the end of June, the survey had collected results from 52 agencies



including 18 cities, 31 counties, and 3 others (township, tribal government, etc.).

Some interesting results include the following:

**Mowing**

- Most counties (nearly 75 percent)—but only 28 percent of cities—mow the entire right-of-way adjacent to rural or agricultural areas.
- The vast majority of the mowing performed by road agencies is done with in-house staff. Only 12 percent of respondents reported that any portion of their mowing activities are contracted.
- 65 percent reported that they mow their rights-of-way two to four times per season.

**Trash pickup**

- 66 percent of agencies reported that they rarely pick up small items of trash and debris, yet 90 percent will pick up large items such as furniture, appliances & tires.

**Grading & landscaping**

- Most cities (88 percent) allow the planting of trees within a ROW, while 77 percent of counties do not.
- For existing trees within the right-of-way, most cities (71 percent) and about half of the Counties consider them the property of the abutting landowner and consult the landowner before removing a tree.
- 75 percent of respondents reported that the grading of a roadside ditch by a homeowner is either prohibited or discouraged.

**Mailboxes**

- 76 percent reported that their agency does not have specific standards for the construction or location of mailboxes within the right-of-way.
- Only 19 percent prohibit the installation of “monument” type mailboxes.

**Driveways & culverts**

- 61 percent of cities do not have specific standards for the installation of driveway culverts. 81 percent of counties do have specific standards.
- After the installation of a culvert, 90 percent of counties reported that ownership of the culvert transfers to the county. In contrast, 59 percent of cities reported that the culvert remains under the ownership of the adjacent landowner.
- 84 percent of counties reported that they are responsible for replacement or repairs to driveway culverts, yet 65 percent of cities reported that the responsibility lies with the

adjacent land owner.

- 94 percent of cities indicated that the adjacent landowner owns the driveway approach, while 68 percent of counties said that the county owns the approach.

**Traffic control measures**

- 84 percent of respondents indicated that they do not currently have any speed bumps or speed humps on any public street within their jurisdiction. 74 percent indicated that they do not allow the installation of speed bumps or speed humps under any circumstances.
- About half of the respondents reported that they do not have, and would not allow “Child at Play,” “Slow Children” or similar signage on any public street within their jurisdiction.
- 20 percent of respondents indicated that they install “Child at Play,” “Slow Children” or similar signs upon request, and an additional 18 percent said that they have a policy or standards that will allow for such installations.



*“Monument type” mailboxes can be deadly if struck by a vehicle. De Soto now prohibits construction of these.*

istockphoto.com

**De Soto’s new policy and guidelines**

The results of the LTAP survey were considered by De Soto’s committee while compiling recommendations for the City Council. Other factors considered by the committee included desired level of service, safety, costs, enforcement, and legal liability issues. With a few exceptions, the new policy simply formalized the practices that have been followed by the City in the past. The committee’s recommendations were formally adopted by the City Council and are summarized on page 3.

The ultimate and goal of this effort was to establish a policy on activities and construction impacting the City’s rights-of-way so property owners and City staff would have a clear understanding of the division of duties and responsibilities. It is important to remember that the City’s roads belong to all of us, and we must protect the public’s investment in infrastructure and take steps to ensure public safety on the roads and thoroughfares throughout the community.

To obtain a copy of De Soto’s new policy or complete results of the LTAP ROW survey, go to <http://www.ksltap.org> and click on “Resources to Download.”

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## City of De Soto's New Right of Way Maintenance Policies: A Summary

### *Mowing*

In addition to mowing City-owned property such as the parks, city shop, and city hall, De Soto also mows various areas of right-of-way around town. It is understood that some of the areas that are currently mowed by the City are not necessarily the result of a policy or even an affirmative decision to mow a particular area. The Committee reviewed these areas and generally agreed that the level of service currently provided is appropriate. There was no cause to drastically modify the areas that the City currently mows.

Based on past practices and a review of the areas currently mowed by the City, the following general policy guidelines defining De Soto's approach to mowing have been set:

- The City mows ROW where sight distances are limited and keeping roadside vegetation mowed is critical for safety reasons.
- The City mows ROW that would present a danger to the homeowner if he or she attempted to perform the maintenance. Examples include areas along higher traffic volume roads, or areas that have very steep side slopes.
- The City mows areas that lie between adjacent roads, or areas where it is not completely clear who would be considered the "adjacent" land owner.
- The City mows ROW in rural areas where the abutting properties are vacant or agricultural.

According to the policy, it is the adjacent land owner's duty to mow and maintain all areas abutting a non-agricultural use or abutting a property that is zoned commercial or industrial. The City will mow the ROW abutting properties that are agricultural unless those areas are zoned commercial or industrial.

### *Driveway Approaches and Culverts*

Property owners are responsible for maintaining all driveway approaches and associated drainage culverts on their property or within the ROW adjacent to their property at their own cost. However it is recognized that since these elements are technically on city property, the liabilities associated with unmaintained culverts or poorly installed culverts cannot be completely transferred to the landowner. The City therefore maintains a right to correct hazardous situations if they arise.

The City has long had specific requirements for the installation of driveways and culverts, but has historically not assumed "ownership" of those elements, even though they are within the ROW. De Soto's new policy does not specifically state that the culverts are the property of the City, but in effect they are city property because they are within the right-of-way.

### *Landscaping, Obstructions & Junk*

Under De Soto's new policy, grasses, flowers and "other vegetation" are allowed within the ROW as long as they do not interfere with traffic sight lines. The policy prohibits planting trees within the ROW, and gives the City the right to remove an existing tree if it interferes with the maintenance, reconstruction, safety or use of the road. It also prohibits the placement of obstructions or junk within the right-of-way. There have been several locations throughout town where homeowners have placed large stones within a ditch or directly adjacent to the road that may pose a hazard to a vehicle. These applications of landscaping elements within the ROW are now prohibited, and De Soto intends to require the removal of landscaping boulders that exist at a handful of locations throughout the City.

### *Mailboxes*

A major portion of the new policy relates to the construction of mailboxes. Throughout the state and country, traffic officials have long recognized the safety hazard caused by some mailboxes. Of particular concern are mailboxes constructed with stone, brick, or other heavy support structures. These are commonly referred to as "monument" type mailboxes, and they can be deadly if struck by a vehicle. A national standard for mailbox construction, entitled A Guide for Erecting Mailboxes on Highways, published by the American Association of State Highway & Transportation Officials (AASHTO) in 1994, has been adopted by reference. This standard gives specific criteria to make mailboxes less hazardous in high traffic areas. De Soto's policy prohibits any new construction of monument-type mailboxes, and treats existing monument mailboxes as "Non-conforming Structures" that are allowed to stay, but cannot be replaced if they are damaged by more than 50 percent.

