

CITY OF SHAWNEE

ORDINANCE NO. 3331

AN ORDINANCE AMENDING SECTIONS 12.06.100, 12.06.302, 12.06.318, 12.06.320, 12.06.330, 12.06.338, 12.06.340, 12.06.410, 12.06.450, AND 12.06.460 OF THE SHAWNEE MUNICIPAL CODE CONCERNING RIGHT-OF-WAY MANAGEMENT; ADDING SECTION 12.06.348 CONCERNING ROUTINE MAINTENANCE OPERATIONS AND RIGHT-OF-WAY RESTORATION; AND REPEALING THE SECTIONS HEREBY AMENDED

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS:

PARAGRAPH 1. Section 12.06.100 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.100 - Definitions.

For purposes of this Chapter, the following words and phrases shall have the meaning given herein:

- A. *Abandoned Facilities* means those facilities owned by the ROW-User that are not in use and will not be utilized by the owner in the future.
- B. *Above Ground Utility Structure* means any above ground structure or enclosure, utility meter or any other Service appurtenance, which is owned, operated, or used by a Service Provider to provide a Service, that exceeds sixteen (16) square feet in size or three (3) feet in height. Above Ground Utility Structure does not mean a pole or device attached to a pole, traffic or pedestrian control facilities, infrastructure for providing water for fire suppression, safety devices, or temporary structures for emergency services.
- C. *Affiliate* means any Person controlling, controlled by or under the common control of a "Service Provider".
- D. *Applicant* means any Person requesting permission to occupy, lease, or operate facilities using the Right-of-Way, or to Excavate the Right-of-Way.
- E. *Area of Influence* means that area around a Street Excavation where the Pavement and sub-grade is impacted by the Excavation and is subject to more rapid deterioration.
- F. *City* means the City of Shawnee, Kansas, a municipal corporation and any duly authorized representative.

- G. *Construct* or *Construction* means and includes any part of the act or process or an act to install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the Right-of-Way.
- H. *Day* means calendar day unless otherwise specified.
- I. *Degradation* means the accelerated depreciation of a Street caused by Excavation in or disturbance of the Street, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the Excavation did not occur.
- J. *Degradation Fee* means the fee charged by the City to recover the cost to the City and the public at large associated with a decrease in the useful life of a Street caused by Excavation.
- K. *Depreciation Rate* means the rate at which the useful Service life of a public Street improvement deteriorates over time.
- L. *Director* means the Public Works Director, Shawnee, Kansas, or his or her designated representative.
- M. *Emergency* means a condition that:
 - 1. Poses a clear and immediate danger to life, health, or of a significant loss of property; or
 - 2. Requires immediate Repair or replacement in order to Restore Service to a user.
- N. *Excavate* or *Excavation* means and includes any cutting, digging, excavating, tunneling, boring, grading, or other alteration of the surface or subsurface material or earth in the Right-of-Way.
- O. *FCC* means Federal Communications Commission.
- P. *Facility* means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless communications facilities, or other equipment.
- Q. *Facility Based Service Provider* means a Service Provider owning or possessing facilities in the Right-of-Way.
- R. *Governing Body* means the Mayor and the City Council of the City of Shawnee, Kansas.
- S. *Governmental Entity* means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.
- T. *KCC* means the Kansas Corporation Commission.

- U. *Landscape Materials* means vegetation, groundcover, plants, and trees, whether natural or artificial, and materials or features such as edging, rocks, or mulch, and similar items that accent the overall appearance of property. Landscape Materials shall not include Public Improvements Construction in accordance with written direction of the Director.
- V. *Mailbox* means a roadside receptacle that is designed solely for the delivery of items bearing postage and delivered by the United States Postal Service, its agents or employees.
- W. *Municipal Separate Storm Sewer System* means the publicly maintained storm water drainage system within this City, all appurtenances and ancillary structures thereto, conveyance or system or conveyances for storm water, including road drainage systems, Streets, catch basins, detention basins, curbs, gutters, ditches, man-made channels, or storm drains, as well as any system that meets the definition of a Municipal Separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 CFR 122.26, or amendments thereto.
- X. *Obstruction* means any object or item that is placed in the Right-of-Way, and shall not include lawfully operated or parked Vehicles, including ordinary vehicular or pedestrian traffic; Landscaping Materials or Mailboxes maintained in compliance with this Chapter; or any other item specifically permitted by this Chapter.
- Y. *Oversized/Overweight Vehicle* means and includes Vehicles going upon, or using any Street or Right-of-Way in such a manner as to prevent, obstruct, damage, or interfere with its normal use, including, but not limited to, traveling on the Street or Right-of-Way by any Vehicle or combination of Vehicles or any object of dimension, weight, or other characteristic prohibited by law, or having other characteristics capable of damaging the Street. "Oversize" or "Overweight Vehicle" shall not mean the movement of any building or structure otherwise in compliance with Chapter 15.56 of the Shawnee Municipal Code, and shall mean any Vehicle that exceeds the weight or size limitation stated in Article 19 of Chapter 8 of the Kansas Statutes Annotated, and amendments thereto.
- Z. *Parkway* means the area between the Right-of-Way line and the Street curb, or edge of Pavement on non-curbed Streets. Sometimes called boulevard, tree-shelf, or snow-shelf.
- AA. *Pavement* means Portland cement concrete Pavement, asphalt concrete Pavement, asphalt treated road surfaces and any aggregate base material.
- BB. *Permit* means the Right-of-Way work Permit authorizing work within the Right-of-Way, and if applicable, the Street Excavation Permit authorizing Excavation in the Street.
- CC. *Permittee* means any Person to whom a Permit is issued.

- DD. *Person* means any individual, association, or entity including, but not limited to, a firm, partnership, a sole proprietorship, joint venture, joint stock company, association, club, company, corporation, business trust, organization, political subdivision, a partnership, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity and shall also mean the manager, lessees, agent, servant, officer or employee of any foregoing.
- EE. *Public Improvement* means the Construction, reconstruction, maintenance, or Repair of any public infrastructure directly related to improvements for the health, safety, and welfare of the public, and including without limitation, Streets, alleys, bridges, bikeways, Parkways, Sidewalks, sewers, drainage facilities, traffic control devices, Street lights, public facilities, public buildings or Public Lands.
- FF. *Public Lands* means any real property of the City that is not Right-of-Way.
- GG. *Repair* means the temporary Construction work necessary to make the Right-of-Way useable.
- HH. *Reseller Service Provider* means a Service Provider providing Service within the City that does not have its own facilities in the Right-of-Way, but instead uses the Right-of-Way by interconnecting with or using the network elements of another Service Provider utilizing the Right-of-Way, and/or by leasing excess capacity from a Facility-based Service Provider.
- II. *Restore or Restoration* means the process by which an excavated Right-of-Way and surrounding area, including Pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.
- JJ. *Right-of-Way* means the entire area on, below, or above those present and future areas acquired, dedicated, reserved, or maintained for public Street purposes.
- KK. *Routine Maintenance Operation* means a work activity that makes no material change to the facilities and does not disrupt traffic for more than one consecutive hour.
- LL. *ROW-User* means a Person, its successors and assigns, that uses the Right-of-Way for purposes of work, Excavation, provision of Services, or to install, Construct, maintain, Repair facilities thereon, including, but not limited to, landowners and Service Providers. A ROW-User shall not include ordinary vehicular or pedestrian traffic or any Governmental Entity that has entered into an agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's Right-of-Way.

- MM. *Service* means a commodity provided to a Person by means of a delivery system that is comprised of facilities located or to be located in the Right-of-Way, including, but not limited to, gas, telephone, cable television, internet Services, open video systems, wireless services, video programming services provided through wireline facilities, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.
- NN. *Service Provider* means any Person that is a provider of a Service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the KCC and the FCC, to provide such Service. Service Provider includes both Facility-based Service Providers and Reseller Service Providers.
- OO. *Sidewalk* means that portion of a Parkway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.
- PP. *Small Cell Facility* means a wireless facility that meets both of the following qualifications:
1. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and
 2. Primary equipment enclosures that are no larger than seventeen (17) cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.
- QQ. *Street* means the Pavement, sub-grade and curb and gutter of a public roadway.
- RR. *Substantially Improved Areas* means an area of the City in which investments have been made:
1. Placing overhead power lines underground.
 2. Capital Improvement Projects with streetscape Items to maximize aesthetics of an area.
- SS. *Vehicle* means every device in, or upon which any Person or property is or may be transported on drawn upon a Right-of-Way, and shall include trailers and boats, and shall not include a motorized wheelchair or device moved by human power or used exclusively upon station rails or tracks.

PARAGRAPH 2. Section 12.06.302 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.302 - Requirements of Service Provider.

- A. By January 1 of every calendar year, each Service Provider using or occupying the Right-of-Way must file an annual registration with the Director on a form provided by the City and, if applicable, must obtain or renew a General Land Disturbance Permit as required by Section 11.20.060 of the Shawnee Municipal Code. No Service Provider may use or occupy the Right-of-Way without first registering with the Director and, if applicable, obtaining a General Land Disturbance Permit as required by Section 11.20.060 of the Shawnee Municipal Code.
- B. The Service Provider shall report any changes in its registration information within thirty (30) Days of such change.
- C. No Service Provider shall be authorized to utilize the Right-of-Way in any capacity or manner without registering as required by this section; obtaining the necessary Permit from the City; and, if applicable, obtaining or renewing a General Land Disturbance Permit as required by Section 11.20.060 of the Shawnee Municipal Code.
- D. To comply with the registration requirements in this section, each Service Provider must provide the following information related to their use of the Right-of-Way:
 - 1. Identity and legal status of Service Provider, including related affiliates.
 - 2. Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration statement.
 - 3. Name, address, telephone number, fax number and email address of the local representative of the Service Provider who shall be available at all times to act on behalf of the Service Provider in the event of an Emergency.
 - 4. Name, address, telephone number, fax number and email address for the following areas: right-of-way maintenance, right-of-way construction, administration, and legal.
 - 5. Proof of any necessary Permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate Governmental Entity, including, but not limited to, the City, the FCC or the KCC.
 - 6. Description of the Service Provider's intended use of the Right-of-Way and a nonproprietary description of Service Provider's existing or proposed Facilities within the City.
 - 7. Information sufficient to determine whether the Service Provider is subject to franchising by Kansas law.

8. Information sufficient to determine whether the Service Provider has applied for and received any certificate of authority required by the KCC.
 9. Information sufficient to determine that the Service Provider has applied for and received any Permit or other approvals required by the FCC.
 10. Information which identifies Reseller Service Providers as provided hereinafter.
 11. Such other information as may be reasonably required by the City to complete the registration statement.
- E. Each Service Provider shall designate a local Person familiar with the facilities that will act as a local agent for the Service Provider and will be responsible for satisfying information requirements of this Chapter. The Service Provider shall present to the City the agent's name, address, telephone number, fax number and email address. The agent shall be the Person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The Service Provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.
- F. Prior to Construction, reconstruction, Repair, maintenance, or relocation of facilities owned by the Service Provider in the Right-of-Way, the Service Provider shall first obtain the necessary Permit as provided hereafter.
- G. Prior to providing Service to the City and its residents, the Service Provider shall first obtain the necessary franchise agreement, if any, from the City.
- H. The Service Provider shall participate in any joint planning, Construction and advance notification of Right-of-Way work, including coordination and consolidation of Street cut work as directed by the Director. In addition, the Service Provider shall cooperate with other Service Providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the Right-of-Way, consistent with safety, and to minimize traffic and other disruptions, including Street cuts.
- I. The Service Provider shall furnish maps showing the location of facilities of the Service Provider within the City as provided hereafter.
- J. To the extent allowed by law, the City may limit the number of registrations, based upon, but not necessarily limited to, specific local considerations such as:
1. The capacity of the Right-of-Way to accommodate service facilities;
 2. The impact on the community of the volume of facilities in the Right-of-Way;
 3. The disruption arising from numerous Excavations of the Right-of-Way;
 4. The financial capabilities of the Service Provider and its guaranteed commitment to make necessary investments to erect, maintain and operate the proposed facilities; or

5. Any other consideration based upon the interests of the public safety and welfare.
- K. The City shall not exercise its authority under this provision to in any way deter competition or discriminate against any Service Provider.

PARAGRAPH 3. Section 12.06.318 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.318 - Permit Requirements.

- A. Except as otherwise provided, no ROW-User may Excavate any Right-of-Way or conduct any Repairs, Construction, or reconstruction of facilities located within the Right-of-Way without first having obtained the appropriate Permit. A Right-of-Way Work Permit shall be required for all work within the Right-of-Way. A Right-of-Way Work Permit does not authorize Street Excavations. A separate Street Excavation Permit shall be required and obtained for any Excavation within a Street.
- B. ROW-Users shall not be required to obtain a Permit when performing Routine Maintenance Operations which do not require Excavation in the Right-of-Way and do not require a lane closure exceeding one hour.
- C. No ROW-User or Person shall Construct, maintain, or permit in or on the portion of the public Right-of-Way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate Permit.
- D. A Permit is required for Emergency situations. If due to an Emergency it is necessary for the ROW-User to immediately perform work in the Right-of-Way, and it is impractical for the ROW-User to first get the appropriate Permit, the work may be performed, and the required Permit shall be obtained as soon as possible during the next City working Day.
- E. No Permittee may Excavate or work within the Right-of-Way beyond the date or dates specified in the Permit unless the Permittee:
 1. Before the expiration of the initial Permit, applies for an extension of the initial Permit, or applies for a new Permit, and
 2. A new Permit is obtained or the initial Permit is extended.
- F. Permits issued shall be conspicuously displayed by the Permittee at all times at the indicated work site and shall be available for inspection by the Director, other City employees and the public.

- G. Prior to the commencement of Excavation, the Permittee shall exercise due caution to identify and locate any buried facilities. Permittee shall timely comply with all provisions of the Kansas Underground Utility Damage Prevention Act and amendments thereto. The Director may order Permittee to cease, and upon issuance of such an order, Permittee shall cease all work not in compliance with the Kansas Underground Utility Damage Prevention Act.
- H. Before receiving a Permit, the Applicant must show proof of any necessary Permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate Governmental Entity, including, but not limited to, the City, the FCC or the KCC.
- I. Any ROW-User who is found to be working in the public Right-of-Way without a Permit will be directed to stop work until a Permit is acquired and properly posted at the work site. The only exception allowed is for Emergency Repair work.
- J. Any Permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices.

PARAGRAPH 4. Section 12.06.320 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.320 - Permit Applications.

- A. Application for a Permit shall be submitted to the Director either by the ROW-User or by the Person who will do the work and/or Excavation in the Right-of-Way.
- B. Permit applications for all work in the Right-of-Way, except Small Cell Facilities, shall contain and be considered complete upon receipt of the following:
 - 1. Proof of registration with the Director, as required by this Chapter and, if applicable, proof of a current General Land Disturbance Permit as required by section 11.20.060 of the Shawnee Municipal Code.
 - 2. Submission of a completed Permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed Facilities at such location;
 - 3. A traffic control plan;
 - 4. Payment of all money due to the City for Permit fees and costs, for prior Excavation costs, for any loss, damage or expense suffered by the City because of the Applicant's prior Excavations of the Right-of-Way or for any Emergency actions taken by the City;
 - 5. Certificate of liability insurance;
 - 6. Performance and Maintenance Bond;

7. Any other requirement that the City Engineer deems reasonable to protect the health, safety, and welfare of the traveling public.
- C. Permit applications for Small Cell Facilities shall contain and be considered complete upon receipt of the following:
1. Compliance with verification of registration;
 2. Submission of a completed Permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project, the location of all existing and proposed Facilities at such location, and the location of other small cell facilities within one thousand (1,000) feet owned by the Applicant;
 3. A traffic control plan to be used during construction, as well as during any future access should the Applicant need to perform maintenance or other work on the Facility;
 4. Payment of all money due to the City for Permit fees and costs, for prior Excavation costs, for any loss, damage or expense suffered by the City because of the Applicant's prior Excavations of the Right-of-Way or for any Emergency actions taken by the City;
 5. Completion of structural analysis and submission of said analysis with the application. This analysis shall be stamped by a Kansas registered professional engineer and shall show that the Facility is capable of supporting the additional load presented by Small Cell Facilities attached to the pole. It shall also show that the pole is capable of withstanding standard wind loads for applications of this type.
 6. An inspection schedule that the Applicant will adhere to throughout the life of the Small Cell Facilities. This schedule shall show that the pole will be inspected for structural defects, at minimum, on an annual basis.
 7. Completion and submission of a property owner notification form for every property owner who is adjacent to the proposed installation of the Small Cell Facilities.
 8. Any other requirement that the City Engineer deems reasonable to protect the health, safety, and welfare of the public.
- D. All applications shall be processed within the timeframes required by state and federal law.
- E. If an Applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple Facilities, that Applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple Facilities until the first application has been approved or denied. The Director may waive this provision.

F. Completed Application; Determination; Tolling

1. The City shall, within thirty (30) calendar days of receipt of an application for Small Cell Facilities, review the application for completeness. An application is complete if it includes the applicable permit review fee(s) and contains all of the applicable submittal requirements set forth in SMC 12.06.320 paragraph C, unless waived by the City. The determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, or substantial changes in the proposed action occur, or the proposed Small Cell Facilities installation or modification is modified by the Applicant, as determined by the City.
2. The City shall notify the applicant within thirty (30) calendar days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.
3. The application review period begins to run when the application is submitted, and may be tolled when the City determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the City and the Applicant. The timeframe for review is not tolled by a moratorium on the review of eligible Facility installation or modification applications.
 - a. To toll the timeframe for review for incompleteness, the City shall provide written notice to the Applicant within thirty (30) calendar days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in SMC 12.06.320 paragraph C and any supplemental information requested by the City that is reasonably related to determining whether the proposed Facilities installation or modification will substantially change the physical dimension of an eligible support structure.
 - b. The timeframe for review begins running again when the City is in receipt of Applicant's supplemental submission in response to the City's notice of incompleteness.
 - c. Following a supplemental submission, the City shall have ten (10) calendar days to notify the Applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in SMC 12.06.320F.3.d. Except as may be otherwise agreed to by the Applicant and the City, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - d. A notice of incompleteness from the City will be deemed received by the Applicant upon the earlier of, personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is

authorized for receipt of notice by the authorized person), or three (3) business days from deposit of the notice in the United States Mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.

- G. In the event that after submittal of the application, or as a result of any subsequent submittals, Applicant modifies the proposed Facilities installation or modification description in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided that, Applicant and the City may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- H. Small Cell Facilities applications shall not be considered submitted until an agreement is in place between the Applicant and the City for use of the public Right-of-Way.

PARAGRAPH 5. Section 12.06.330 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.330 - Permitted Work.

- A. No Person shall Excavate in the Right-of-Way unless necessary for Emergency Repairs without first securing the Right-of-Way Work Permit authorizing work within the Right-of-Way, and, if necessary, the Street Excavation Permit authorizing Excavation in the Street.
- B. The Permittee shall document existing conditions at the site by taking pre-construction photographs.
- C. The Permittee shall notify all affected homeowners and businesses forty-eight (48) hours in advance of the work.
- D. The Permittee shall not at any one time open or encumber more of the Right-of-Way than shall be reasonably necessary to enable the Permittee to complete the project in the most expeditious manner.
- E. The Permittee shall, in the performance of any work required for the installation, Repair, maintenance, relocation and/or removal of any of its facilities, limit all Excavations to those Excavations that are necessary for efficient operation.
- F. The Permittee shall not permit such an Excavation to remain open longer than is necessary to complete the Repair or installation.
- G. The Permittee shall notify the City no less than three (3) working Days in advance of any Construction, reconstruction, Repair, location or relocation of facilities which would require any Street closure or which reduces traffic flow to less than two (2) lanes of moving traffic for more than one hour. Except in the

event of an Emergency as reasonably determined by the Permittee, no such closure shall take place without notice and prior authorization from the City. The Permittee shall comply with the City's policy regarding the complete closure of a public Street that requires detouring traffic, including the establishment of escrow accounts as a performance guarantee for the timely completion of the work, as required by the latest City of Shawnee Policy Statement Code.

- H. Unless first obtaining prior written consent of the Director, non-emergency work on arterial and collector Streets shall be completed between the hours of 8:30 a.m. and 4:00 p.m. in order to minimize disruption of traffic flow. In all other areas, non-emergency work shall be completed between the hours of 7:00 a.m. and 7:00 p.m.
- I. All work performed in the Right-of-Way or which in any way impacts vehicular or pedestrian traffic shall be properly signed and barricaded as indicated on the traffic control plan, and otherwise protected at the Permittee's expense. Such signage shall be in conformance with the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.
- J. The Permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act "Kansas One Call" system, and notice shall be provided directly to Water District No. 1, and either to Kansas City Power and Light (KCP&L), KPL, or to the Traffic Operations Section of the Public Works Department with respect to any municipal traffic signal and Street light systems, as appropriate.
- K. The Permittee shall be liable for any damages to underground facilities due to Excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to Excavation. The Permittee shall not make or attempt to make Repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.
- L. Whenever there is an Excavation by the Permittee, the Permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by Director. The Permittee shall perform work on the Right-of-Way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the Excavation is not completed in a reasonable period of time, the Permittee may be liable for actual damages to the City for delay caused by the Permittee pursuant to this Chapter.
- M. All facilities and other appurtenances laid, constructed and maintained by the Permittee shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, as well as the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties.

- N. Following completion of permitted work for new Construction, the Permittee shall keep, maintain and provide to the City records depicting the location of all utility facilities constructed pursuant to the Permit. When available to the Permittee, maps and drawings provided will be submitted in AUTOCAD.DXF or AUTOCAD.DWG automated formats if available or in hard copy otherwise. The Director may waive this requirement. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section entitled "Mapping Requirements of Service Provider" contained herein.
- O. The City may use the as-built records of the Service Provider's facilities in connection with Public Improvements.

PARAGRAPH 6. Section 12.06.338 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.338 - Other Obligations.

- A. Obtaining a Permit under this Chapter shall not relieve the Permittee of its duty to obtain any necessary Permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate Governmental Entity, including, but not limited to, the City, the FCC or the KCC, and to pay any fees required by any other City, County, State, or Federal rules, laws, or regulations. A Permittee shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations and shall be responsible for all work done in the Right-of-Way pursuant to its Permit, regardless by whom the work is done by.
- B. Except in cases of an Emergency or with approval of the Director, no Right-of-Way work may be done when conditions are unreasonable for such work.
- C. A Permittee shall not disrupt a Right-of-Way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private Vehicles may not be parked within or next to the Permit area.

PARAGRAPH 7. Section 12.06.340 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.340 - Denial of a Permit.

- A. The Director may deny a Permit or prohibit the use or occupancy of a specific portion of the Right-of-Way to protect the public health, safety, or welfare, to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way, or when necessary to protect the Right-of-Way and its users. The

Director, at his or her discretion, may consider all relevant factors including but not limited to:

1. The extent to which the Right-of-Way space where the Permit is sought is available;
 2. The competing demands for the particular space in the Right-of-Way;
 3. The availability of other portions of the Right-of-Way or in other Right-of-Ways for the facilities of the Applicant;
 4. The applicability of any ordinance or other regulations, including City zoning regulations, that affect location of or other standards for Facilities in the Right-of-Way;
 5. The degree of compliance of the Applicant with the terms and conditions of its franchise, this Chapter, and other applicable ordinances and regulations;
 6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Right-of-Way;
 7. The condition and age of the Right-of-Way, which was constructed or reconstructed within the preceding five (5) years;
 8. The balancing of costs of disruption to the public and damage to the Right-of-Way, against the benefits to that part of the public served by the Construction in the Right-of-Way;
 9. Whether the Applicant has registered with the Director as required by this Chapter;
 10. Whether the Applicant, if required, maintains a current General Land Disturbance Permit as required by Section 11.20.060 of the Shawnee Municipal Code;
 11. Whether the Applicant has failed within the last three (3) years to comply, or is presently not in full compliance with, the requirements of this Chapter;
 12. Whether the Applicant has delinquent debt owed to the City;
 13. Whether the issuance of a Permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Director shall be guided by the safety and convenience of anticipated travel of the public over the Right-of-Way.
 14. Whether the application complies with the Manual of Technical Specifications and Design Criteria for Public Improvement Projects.
 15. The adverse impact of the Facilities or the Facilities' proposed location on any reasonable public interest necessitated by public health, safety, or welfare.
- B. Notwithstanding the above provisions, the Director may in his or her discretion issue a Permit in any case where the Permit is necessary to:

1. Prevent substantial economic hardship to a user of the Applicant's Service;
 2. Allow such user to materially improve the service provided by the Applicant.
- C. The Director shall not issue a Right-of-Way Permit for encroachments in the Right-of-Way for private purposes that create a safety hazard and would be deemed a nuisance pursuant to Chapter 12.06 of the Shawnee Municipal Code.
- D. Any denial of wireless communications antenna, tower, or related facilities shall, in accordance with federal and state law, be made in writing, and supported by substantial evidence contained in a written record issued contemporaneously with said decision.

PARAGRAPH 8. Section 12.06.348 of the Shawnee Municipal Code is hereby added to read as follows:

12.06.348 – Routine Maintenance Operations and Right-of-Way Restoration

- A. At least 24 hours before conducting any Routine Maintenance Operation within the Right-of-Way, a Service Provider or their agent must contact the Director and provide the area(s) in which the Service Provider intends to conduct the Routine Maintenance Operation.
- B. After any Routine Maintenance Operation, the Service Provider shall, at its expense, Restore all portions of the Right-of-Way to the same condition or better condition that it was prior to the Routine Maintenance Operation.
- C. The Director has the authority to inspect the area(s) in which the Service Provider conducted the Routine Maintenance Operation and, if necessary, require the Service Provider to do additional necessary work to Restore the Right-of-Way. Notice of unsatisfactory Restoration and the deficiencies found will be provided to the Service Provider and a reasonable time not to exceed 14 Days will be provided to allow for the deficiencies to be corrected.
- D. If the Service Provider fails to Restore the Right-of-Way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all Restoration, the City may, at its option, serve written notice upon the Service Provider that, unless within 10 Days after serving the notice, a satisfactory arrangement can be made for the proper Restoration of the Right-of-Way, the City may take over the work and prosecute same to completion, by contract or otherwise, at the Service Provider's expense, and the Service Provider shall be liable to the City for any and all excess costs assumed by the City by reason of such prosecution and completion.

PARAGRAPH 9. Section 12.06.410 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.410 - Federal, State and City Jurisdiction.

This Chapter shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Chapter to the contrary, the Construction, operation and maintenance of the ROW-User's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW-User shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW-User's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-User shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-User to comply with any applicable law or regulation may result in a forfeiture of any Permit, registration or authorization granted in accordance with this Chapter.

PARAGRAPH 10. Section 12.06.450 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.450 - Reservation of Rights.

- A. In addition to any rights specifically reserved to the City by this chapter 12.06, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, Permit or other authorization granted under this Chapter. The City shall have the right to waive any provision of this Chapter or any registration, Permit or other authorization granted hereunder, except those required by federal or state law, if the City determines as follows: (a) that it is in the public interest to do so; and (b) that the enforcement of such provision will impose an undue hardship on the Person. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.
- B. Notwithstanding anything to the contrary set forth herein, the provisions of this Chapter shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the Right-of Way.

PARAGRAPH 11. Section 12.06.460 of the Shawnee Municipal Code is hereby amended to read as follows:

12.06.460 - Penalties.

- A. Upon determination of the Director that there exists a violation of any provision of this Chapter, or any notice or order issued under the authority of this Chapter, the Chief Codes Administrator or duly authorized agent, or such Person authorized pursuant to Section 2.28.070 of the Shawnee Municipal Code, shall be empowered to serve a complaint or notice to appear upon a Person who is in violation of this Chapter, and upon conviction, such Person shall be subject to the penalties and remedies herein.
- B. Any Person violating any provision of this Chapter, or any notice or order issued under the authority of this Chapter, shall severally for each and every such violation, be guilty of a municipal offense, and upon conviction thereof shall be punished for the first conviction by a fine of not more than five hundred dollars (\$500.00) and/or up to six (6) months in jail; for a second conviction based on a violation that occurs within two (2) years of the date of the first conviction such Person shall be punished by a fine of not more than one thousand dollars (\$1,000.00) and/or up to six (6) months in jail; and upon a third or subsequent conviction based on a violation that occurs within two (2) years of the date of the first conviction such Person shall be punished by a fine of not more than one thousand five hundred dollars (\$1,500.00) and up to six (6) months in jail.
- C. Every Day that this chapter is violated shall constitute a separate offense.
- D. The violation of any provision of this Chapter is hereby deemed to be grounds for revocation of the Permit to such Person, including the right to operate or provide Service within the City.
- E. The imposition of a penalty for any violation or noncompliance shall not excuse any violation, permit a violation to continue, or excuse any obligation to remedy any violation.
- F. The imposition of a penalty shall not prohibit any action by the Director to enforce compliance, prevent a violation, or remedy a violation, nor shall it prohibit the Director from imposing liens or assessments necessary to remedy a violation of this Chapter.
- G. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Chapter. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Chapter.

PARAGRAPH 12. Upon the effective date of this Ordinance, Sections 12.06.100, 12.06.302, 12.06.318, 12.06.320, 12.06.330, 12.06.338, 12.06.340, 12.06.410,

12.06.450, and 12.06.460 of the Shawnee Municipal Code as they existed before the above amendments are hereby repealed.

PARAGRAPH 13. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

PARAGRAPH 14. Neither the passage of this Ordinance, the repeal of the Ordinance or Code provisions set forth herein, or the future repeal or amendment of any Ordinance or Code section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance or any Ordinance or Code amended or repealed herein, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under any Ordinance or Code, nor be construed as affecting any of the provisions of such Ordinance or Code relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Ordinance or Code, and all rights and obligations thereunder shall continue in full force and effect. Any Ordinance or Code sections amended or repealed, are hereby continued in force and effect after the passage, approval, and publication of this Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities, and actions therefore.

PARAGRAPH 15. This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

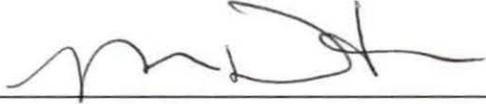
This portion is intentionally blank.

PASSED by the Governing Body this 22 day of June, 2020.

APPROVED AND SIGNED by the Mayor this 22 day of June, 2020.



CITY OF SHAWNEE, KANSAS

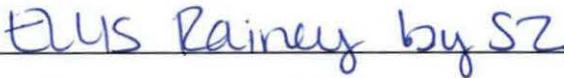
By: 

Michelle Distler, Mayor

ATTEST:

By: 
Stephanie Zaldivar, City Clerk

APPROVED AS TO FORM:

By: 
Ellis Rainey, City Attorney

The Legal Record

1701 E. Cedar St., Ste. 111
Olathe, KS 66062-1775
(913) 780-5790

CITY OF SHAWNEE - CITY CLERK
11110 JOHNSON DR
SHAWNEE KS 66203-2750

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Pam Kruse, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Billing Clerk for The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

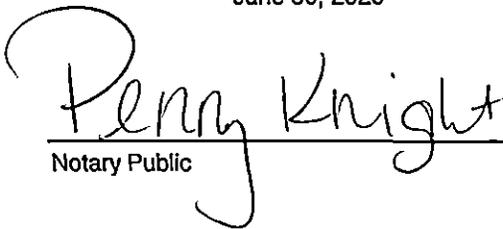
ORDINANCE #3331 SUMMARY
6/30/20



Pam Kruse, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

June 30, 2020



Notary Public

PENNY KNIGHT
Notary Public-State of Kansas
My Appt. Expires Dec. 31, 2021

First published in The Legal Record, Tuesday, June 30, 2020
CITY OF SHAWNEE
Summary of Ordinance No. 3331

On the 22 day of June, 2020, the Governing Body of the City of Shawnee, Kansas passed Ordinance No. 3331, Right-of-Way Management.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk or at www.cityofshawnee.org.

The undersigned hereby certifies as prescribed by KSA 12-3007 that the foregoing Summary of Ordinance No. 3331 is legally accurate and sufficient.

Dated: June 22, 2020

/s/ M. Ellis Rainey, II, City Attorney
6/30