

CITY OF SHAWNEE

ORDINANCE NO. 3272

AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 12 OF THE SHAWNEE MUNICIPAL CODE RELATING TO MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY FOR THE CITY OF SHAWNEE, KANSAS.

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

PARAGRAPH 1. Shawnee Municipal Code Section 12.06.100 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 (a) poses a clear and immediate danger to life, health, or of a significant loss of property; or (b) 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. "Registration" means the application process of a Service Provider, the approval of the application by the City, and the authorization of the Service Provider to use any portion of the Right-of-Way within the City to provide Service both within and beyond the City limits.

- HH. "Repair" means the temporary Construction work necessary to make the Right-of-Way useable.
- II. "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.
- JJ. "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.
- KK. "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.
- LL. "Routine Maintenance Operation" means a work activity that makes no material change to the facilities and does not disrupt traffic for more than four (4) consecutive hours.
- MM. "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.
- NN. "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.
- OO. "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.
- PP. "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.
- QQ. "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 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 cubic feet; and

2. Primary equipment enclosures that are no larger than 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.
- RR. "Street" means the Pavement, sub-grade and curb and gutter of a public roadway.
- SS. "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.
- TT. "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. Shawnee Municipal Code Section 12.06.308 is hereby amended to read as follows:

12.06.308 Use of Right-of-Way.

- A. The ROW-User's use of the Right-of-Way shall in all matters be subordinate to the City's use or occupation of the Right-of-Way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- B. The ROW-User shall coordinate the placement of facilities in a manner that does not interfere with any Public Improvement and does not compromise the public health, safety, or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements and as defined in required by the latest Shawnee Manual of Technical Specifications and Design Criteria for Public Improvement Projects available in the office of the Director. Such Standards shall be competitively neutral and not unreasonable or discriminatory.
- C. The ROW-User shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future Street improvement relocation expenses.

- D. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or Public Improvements already installed. In addition, the ROW-User shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with planned Public Improvements or the use of the Streets, alleys, Sidewalks or other Public Lands of the City.
- E. All facilities of the ROW-User shall be placed so that they do not interfere with the use of Right-of-Way and Public Lands. The City, through its Director, shall have the right to consult and review the location, design and nature of the Facility prior to its being installed.
- F. Whenever reasonably possible, all newly constructed facilities shall be located underground. The ROW-User shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Director at his or her discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-Users. If this requirement is waived, the facilities shall be located as directed by the Director, including, but not limited to, requirements regarding location and height. Above ground Facilities shall comply with the latest Shawnee Manual of Technical Specifications and Design Criteria for Public Improvement Projects and all applicable zoning regulations, and be located in a manner that does not compromise the public health, safety, or welfare.
- G. No ROW-User shall erect, construct, or install any Facility within the Right-of-Way that exceeds a height of sixty feet (60').
 - 1. Exceptions
 - a. Temporary Exceptions. The Director or his or her designee may grant special permission in cases where temporary electrical power or communication service is reasonably required for emergencies or for building construction purposes, or for other temporary purposes, to erect, construct, install, or maintain poles, wires, and other overhead structures for a period not to exceed one hundred twenty (120) days. However, in the event the purpose for which the temporary exception referred to herein as granted cannot be completed within the period herein provided, because of a shortage of material, a natural disaster, strikes, or other circumstances beyond the control of the parties, or by unusual hardships, then the time may be extended an additional temporary period or periods as necessary to allow completion of such construction.
 - b. Permanent Exceptions. The provisions of this section shall not apply to any of the following uses.
 - 1. All electric power lines rated at or above "feeder" line class. For purposes thereof, a "feeder" line is defined as that portion of an electrical circuit which provides power from a power

- substation and which has a rated capacity of three thousand (3,000) KVA or more;
- 2. All telecable lines rated at or above "trunk" line class. For purpose hereof, a "trunk" line is defined as that portion of a telecable system's lines that is .750 inches in diameter.
- 3. Poles used exclusively for street or area lighting or for traffic control facilities.
- 4. Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service.
- H. The ROW-User shall meet the following maximum height requirements based on adjacent street classification when erecting, constructing, or installing any new Facility within the Right-of-Way:
 - 1. Residential – twenty feet (20')
 - 2. Collector – forty feet (40')
 - 3. Arterial – sixty feet (60')
- I. The ROW-User shall meet the following minimum spacing requirements based on adjacent street classification when erecting, constructing, or installing any new Facility within the Right-of-Way:
 - 1. Residential – minimum distance of three hundred fifty feet (350') between newly placed Facility
 - 2. Collector – minimum distance of two hundred fifty feet (250') between newly placed Facility
 - 3. Arterial – minimum distance of two hundred twenty-five feet (225') between newly placed Facility
- J. The ROW-User shall not interfere with the facilities of the other ROW-Users without their permission. If and when the City requires or negotiates to have a Service Provider cease using its existing poles and to relocate its Facilities underground, all other Service Providers using the same poles shall also relocate their Facilities underground at the same time, except transmission equipment, as defined in 47 CFR 1.40001.
- K. The Director may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of Facility that is currently or, pursuant to current technology, the Director expects will someday be located within the Right-of-Way. All Permits issued by Director shall indicate the proper corridor for the ROW-User's facilities. Any ROW-User whose facilities are currently in the Right-of-Way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or Excavation of the area where its facilities are located, move the facilities to its assigned position within the Right-of-Way, unless this requirement is waived by Director for good cause shown, upon consideration of such factors as: the remaining economic life of the facilities, public health, safety, or welfare; user Service needs; and hardship to the ROW-User.
- L. If, in the preparation and planning of a Right-of-Way project, the Director deems it appropriate for a conduit to be constructed along, across or under the Right-of-Way, the Director shall contact all appropriate ROW-Users for their input on the planning and design of

such conduit. If a ROW-User desires to Construct, maintain, or operate facilities along such Right-of-Way, the Director may require the ROW-User to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-User use of the conduit is reasonable and appropriate under the circumstances.

- M. All earth, materials, Sidewalks, paving, crossings, utilities, other Public Improvements or improvements of any kind damaged or removed by the ROW-User shall be fully Repaired or replaced promptly by the ROW-User at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Director that such Repair or replacement is a public safety matter, all such Repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Director may direct the City to make such Repair or replacement and bill the ROW-User for the City cost. The Director has the authority to inspect the Repair or replacement of the damage, and if necessary, to require the ROW-User to do any necessary additional work.
- N. All technical standards governing Construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-User's facilities in the Right-of-Way shall be in accordance with the Manual of Technical Specifications and Design Criteria for Public Improvement Projects and all applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-User. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Chapter may be in addition to or stricter than such minimum standards. A ROW-User shall not Construct or reconstruct any of its facilities located upon, over, under or within the City Right-of-Way without first having submitted in writing a description of its planned improvement to the Director and having received a Permit for such improvement. The Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the Permit.
- O. The ROW-User shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the Right-of-Way, both underground and overhead, when requested by the City or its authorized agent for a Public Improvement. Such location and identification shall be at the sole expense of the ROW-User without any expense to the City, its employees, agents, or authorized contractors.

P. The ROW-User shall meet or exceed the following Aesthetic Standards when placing a new Facility or attaching/replacing a City owned Facility for the purposes of a Small Cell Facility within the Right-of-Way. Any Small Cell Facility that does not meet the standards below shall be put on hold and subject to a review by the Governing Body:

1. No new Facility (pole) shall be allowed within the Right-of-Way of Substantially Improved Areas of the City.
2. All attachments to City owned infrastructure shall be allowed on non-decorative poles only.
3. Any Small Cell Facility shall not obstruct:
 - a. any historic/scenic view
 - b. Other Facilities (Public or Private)
 - c. Infrastructure related to Public Transportation
4. Small Cell Facility attached equipment shall be mounted a minimum of eight feet (8') from grade to bottom of equipment. Attachments shall be restricted to the 2 sides of the pole not adjacent to the Street or Sidewalk.
5. All antennae shall be enclosed to screen the antennae from view and the maximum height of the enclosure shall be 10% of the poles height.
6. All cabling associated with a Small Cell Facility shall be hidden inside the pole if possible or at a minimum covered.
7. No additional light sources shall be exposed as part of the attached Small Cell Facility.
8. The ROW-User placing a new Facility (pole) within the Right-of-Way for the purposes of a Small Cell Facility must utilize a steel or aluminum pole of similar style and color to an adjacent Facility.
9. Any Facility replaced as part of a Small Cell Facility installation must be replaced with current lighting standards as shown in the Shawnee Design and Construction Manual.

PARAGRAPH 3. The previously existing Sections 12.06.100, 12.06.308 of the Shawnee Municipal Code are hereby repealed.

PARAGRAPH 4. Severability. If any one or more sections, subsections or other part of this Ordinance shall be declared invalid by a court of competent jurisdiction, it is the intent of the City that the remaining portions of the Ordinance shall remain effective. The City states that it would have enacted such remaining portions irrespective of the fact that one or more sections, subsections, or other part of the Ordinance have been held invalid.

PARAGRAPH 5. This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

PASSED by the Governing Body this 25th day of March, 2019.

APPROVED AND SIGNED by the Mayor this 25th day of March, 2019.

CITY OF SHAWNEE, KANSAS



By: _____


Michelle Distler, Mayor


ATTEST:

By: _____


Stephanie Zaldivar, Interim City Clerk

APPROVED AS TO FORM:

By: _____


M. Ellis Rainey, II, City Attorney

**OFFICE OF THE CITY CLERK
PUBLICATION CERTIFICATE**

I hereby certify that the foregoing is the original Ordinance. 3272; that was passed on the 25 day of March, 2019; that the record of the final vote on its passage is found in Journal No. 78, Volume No 5-2018, and Page No. 19; and that the Ordinance was published in The Legal Record, the official City newspaper on the 9 day of April, 2019.


Stephanie Zaldivar, City Clerk



The Legal Record

P.O. Box 273
Olathe, KS 66051-0273
(913) 780-5790

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

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Patricia Hammer, of lawful age, being first duly sworn, deposes and says that she is Legal Notices 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 #3272
4/9/19

Patricia Hammer

Patricia Hammer, Legal Notices Clerk

Subscribed and sworn to before me on this date:

April 9, 2019

[Signature]

Notary Public

DEBRA VALENTI
Notary Public-State of Kansas
My Appt. Expires Aug 21, 2019

L79438
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