

ORDINANCE NO. 25-50

AN ORDINANCE PERTAINING TO PUBLIC UTILITIES; ADDING NEW SECTIONS 12.14.200 AND 12.14.300 TO THE OLATHE MUNICIPAL CODE AND AMENDING SECTION 12.14.010 AND REPEALING THE EXISTING SECTION.

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

SECTION ONE: Section 12.14.010 of the Olathe Municipal Code is hereby amended to read as follows:

“12.14.010 Definitions.

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given in this Section:

“Easement” means a permanent or temporary grant of right by a landowner to the public, a corporation, or other persons, of the use of a portion of a lot or tract of land for specified purposes where title to said portion of the lot or tract of land remains with the landowner.

“Emergency” means a condition that:

- (1) Poses a clear and immediate danger to life or health, or of a significant loss of property; or
- (2) Requires immediate repair or replacement in order to restore service to a user.

“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.

“MUTCD” means the Federal Highway Administration’s Manual on Uniform Traffic Control Devices.

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“Person” means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

“Public improvement” means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewer lines, water lines, drainage facilities, traffic control devices, street lights, public facilities, underground fiber conduit and any content therein, public buildings, public lands, and any appurtenances related thereto.

“Public lands” means any real property of the City that is not right-of-way.

“Right-of-way” and “ROW” means the area on, below or above streets, alleys, bridges and parkways in which the City has a dedicated or acquired right-of-way interest in the real property.

“Right-of-way user” and “ROW user” means a person, or its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, and repair facilities thereon, including, but not limited to, landowners and service providers. A ROW user shall not include ordinary vehicular or pedestrian traffic.

“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, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

“Service provider” means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; however, this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a

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fee, regardless of whether the actual facility owner provides any service as defined herein.

“Street” means the pavement and sub-grade of a City residential, collector or arterial roadway.

“Technical specifications” means the technical specifications, design criteria, design aids, and design details promulgated by the City Engineer.”

SECTION TWO: Section 12.14.200 is hereby added to the Olathe Municipal Code to read as follows:

“12.14.200 Utility Easements.

(A) Unless its express terms indicate otherwise, any utility easement granted, dedicated, or otherwise conveyed to the City that has been accepted by the City shall be considered dedicated for public use or benefit, subject to the purpose of and any limitations set forth in the easement, and shall be held in trust for such use or benefit by the City. Use of the easement by any user other than the City must be authorized by the easement, by state or federal law, or by the City through its rules, regulations, policies, resolutions, ordinances, or technical specifications. Use of the easement shall be subject to all rules, regulations, policies, resolutions, ordinances, and technical specifications now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. The rights of any user of the easement are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Any user of the easement shall promptly remove, relocate, or adjust any facilities located in the easement as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety, or welfare. Subject to the terms of the easement, such removal, relocation, or adjustment shall be performed by the user at the user's sole expense without expense to the City or its employees, agents, or authorized contractors. Nothing in this section shall be construed to prevent the City from vacating or releasing any easement conveyed to the City.

(B) For purposes of this Chapter, an easement shall not be considered ROW unless the underlying real property otherwise meets the definition of ROW.

(C) Any public utility, as defined in K.S.A. 66-104, that has entered into a valid and current franchise agreement with the City or is specifically authorized under state or federal law to operate within the City without a franchise agreement with the City is authorized to use any utility easement granted, dedicated, or otherwise conveyed to the City that has been accepted by the City, subject to the purpose, terms, and limitations set forth in the easement; the provisions of this section; and rules, regulations, policies, and technical specifications of the City.”

SECTION THREE: Section 12.14.300 is hereby added to the Olathe Municipal Code to read as follows:

“12.14.300 Facility Locates.

(A) *Definitions.* Unless otherwise indicated, terms used in this section have the meaning provided, if any, in the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq. (K.U.U.D.P.A.).

(B) *City Projects; Facility Locates Required.* To assist in the planning and design of City projects, the City may request any operator the City believes may have an underground facility that may be impacted by a City project to mark the location of any such facilities within the project area. Such operator shall have 30 days from the date of such request to fully and accurately mark, flag, or otherwise locate in a manner acceptable to the City any such facilities within the project area and to provide up-to-date as-built plans showing the location of any such facilities within the project area; or to notify the City that the operator has no such facilities within the project area.

(C) *Failure to Locate; Penalties.*

(1) Any operator failing to comply with the provisions of subsection (B) will be subject to the penalties established by Section 12.14.020(D) for violations of this Chapter.

(2) Such operator will also:

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(a) Be responsible for any damages to the City caused by such non-compliance, including the cost to make project design or schedule changes to accommodate any facilities that were not timely located; and

(b) Forfeit any claims for reimbursement related to relocation for the City project of any facilities not timely located pursuant to subsection (B).

(D) *Inability to Locate.* Any Tier 1 facilities reported to the City by the operator as unlocatable will be presumed to constitute a risk to the public health, safety, and welfare, unless the operator provides evidence otherwise to the satisfaction of the City, and the City may require the operator to take remedial action regarding such facilities at the operator's sole cost to address the risk.

(E) *Other Law.* Nothing in this section relieves an operator of its responsibilities under the K.U.U.D.P.A.”

SECTION FOUR: Existing Section 12.14.010 is hereby repealed.

SECTION FIVE: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this _____ day of _____, 2025.

SIGNED by the Mayor this _____ day of _____, 2025.

Mayor

ATTEST:

City Clerk

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(SEAL)

APPROVED AS TO FORM:

City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.