

**ORDINANCE NO. 3826**

**AN ORDINANCE FOR MANAGING THE USE AND OCCUPANCY OF PUBLIC  
RIGHT-OF-WAY FOR THE CITY OF OSAWATOMIE, KANSAS; ADDING NEW  
OSAWATOMIE MUNICIPAL CODE CHAPTER 12, ARTICLE 10, SECTIONS 1001-  
1013.**

**WHEREAS**, there is not currently a permitting process for regulating use of right-of-way within City of Osawatomie city limits; and

**WHEREAS**, a permitting process would allow city staff to review and direct utility placement in City right-of-way and ensure the integrity of City infrastructure; and

**WHEREAS**, a permitting process would reduce conflicts between utilities and ensure that City staff were made aware of all work done around City infrastructure; and

**WHEREAS**, the intentional and efficient use of City right-of-way is necessary for the continued growth and development of the city; and

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF  
OSAWATOMIE KANSAS, AS FOLLOWS:**

**SECTION 1.** The code of the City of Osawatomie is hereby amended by adding Chapter 12, Article 10, Sections 1001-1013 which read as follows:

**12-1001. Purpose**

- A. The purpose of this Article will be to regulate occupancy, obstructions of and excavations in the right-of-way by providing, among other things, for the issuance of permits granting authority to utilize and occupy the right-of-way within the City.
- B. The permittee shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City and is subject to all applicable laws orders, rules and regulations adopted by governmental bodies now or hereafter having jurisdiction. In addition, the permittee shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration and other requirements on the use of the right-of-way.

## **12-1002. Administration**

The principal City Official responsible for administration of right-of-way permits shall be the Public Works Director or Utility Director.

## **12-1003. Registration and License**

Before receiving a permit, the permittee must show proof of all other applicable materials subject to any other articles of this code. This includes but is not limited to registration, license, insurance and franchise agreement.

## **12-1004. Permit Requirements**

- A. Except as otherwise provided, no excavating or obstructing of any right-of-way may commence until the appropriate right-of-way permit has been obtained. Applicants for a right-of-way permit must obtain locates pursuant to Kansas law (66-1801. Kansas underground utility damage prevention act.).
- B. A right-of-way permit will not be required for a property owner completing work within the boundaries of their property. Locates pursuant to Kansas law and other city permits or fees may still apply depending on the work completed.
- C. A right-of-way permit is required for emergency situations. For unscheduled emergency maintenance repairs no notification to the Public Works Director will be required until service is resumed. Coordination with City of Osawatomie staff is required if the emergency repair work will cause temporary lane reductions or closures. On the first working day subsequent to such repairs, the utility company shall notify the Public Works Director. At that time, the utility shall make an application for the required permit following normal procedures.
- D. Prior to the commencement of excavation, the permittee shall identify with markers or paint the perimeter of the excavation and the identification of any buried facilities. The specific placement locations for the work in the right-of-way must be approved by the Director of Public Works, Director of Utilities, or their designee prior to work starting. The Directors shall insure that the placement locations will not interfere with the construction, repair, or maintenance of City infrastructure and meet the following standards.
  - a. The specific placement locations shall be designed and the property installed so that the Permittee's installed property is a minimum of three (3) feet under and/or three (3) feet laterally from any water mains, sewer mains, electric lines, and utility poles (3 feet laterally).
    - i. Except where it is necessary to cross water mains, sewer mains, or electric lines pursuant to the conditions of this permit,

- ii. Or, except where the Utilities Director grants a written exception after considering the totality of the circumstances and the best interests of the City;
  - b. The Permittee must obtain the consent of the Utilities Director prior to each instance where a water main, sewer main, or electric line must be crossed.
    - i. The Utilities Director shall grant consent for the crossing of any water mains, sewer mains, or electric lines where Permittee demonstrates compliance with all City standards for said crossings, and
    - ii. Permittee has made appropriate arrangements for a City utility employee to be present at the work site at all times while work is performed at the crossing.
    - iii. Permittee agrees to compensate the City for the cost of the utility employee while on the work site at the rate of forty dollars (\$40.00) per hour.
- E. All underground installations crossing hard surface type paved roadways shall be done by boring unless an exception is granted by the public works department. All street cuts, when approved, must be saw-cut prior to street patch.
- F. Permittee's construction methods, equipment, and operational procedures shall be subject to approval of the Public Works Director.
- G. Permittee's construction shall be in accordance with current city standards and good construction practice.
- H. The holder of the permit agrees to warrant all workmanship and installations for one year after completion of the project.
- I. If the City engages in any construction project on its right-of-way which is owned by or under the control of the City which makes it necessary to remove or relocate any portion of the facilities owned by permittee, the permittee shall make any necessary relocation at no cost to the City.

### **12-1005. Permit Applications**

- A. Application for a right-of-way permit shall be submitted to the Public Works Director.
- B. Right-of-way permit applications shall contain, but not be limited to, the following information: the permittee's name, address, insurance certificate, bonds, maps/plans, and work description for processing the right-of-way permit.
- C. Right-of-way permit applications will not be considered complete or processed without the aforementioned materials and payment of all money due to the City for franchise fees, permit fees and costs, for prior obstructions or excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations or obstructions of the right-of-way or for any emergency actions taken by the City.

- D. The permittee shall keep all right-of-way permit information current at all times by providing the Public Works Director information as to changes within fifteen (15) days following the date on which the permittee has knowledge of any change.

#### **12-1006. Issuance of Permit**

- A. If the Public Works Director or their designee determines that the applicant has satisfied the requirements of this Chapter, the Public Works Director may issue a right-of-way permit.
- B. The Public Works Director or their designee may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of the other users of the right-of-way, and to minimize the obstruction and inconvenience to the traveling public.
- C. A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated or obstructed must do the following prior to the commencement of work in that greater area:
  - a. Make application for a permit extension and pay any additional fees required thereby, and
  - b. Receive a new permit or permit extension.
- D. A right-of-way permit shall be valid sixty (60) days after the date of issuance unless. No permittee may commence work before giving two (2) full working days notice to Public Works Staff and receiving an initial inspection of marked areas. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.
- E. Staff will notify the permittee in writing once the permit has been issued.
- F. Right-of-way permits issued shall be available at all times at the indicated work site and shall be available for inspection by the Public Works Director, other City employees, and the public.
- G. Issued permits are not transferable.
- H. Obtaining a right-of-way permit under this Chapter shall not relieve the permittee of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by any other City, County, State or Federal rules, laws or regulations.

## **12-1007 Inspections**

- A. The City of Osawatomie Public Works or Utility staff will perform inspections on, but not limited to, the following types of construction activities:
  - a. Any construction that affects City of Osawatomie infrastructure: streets, sidewalks, storm sewer, water lines, sanitary sewers, street lights, traffic signals, etc.
  - b. All street cuts and restoration
  - c. All curb cuts and restoration
  - d. All sidewalk and driveway approach replacement completed by someone other than the property owner
  - e. Directional boring within the right-of-way
  - f. Connections to any City-owned facility (storm sewer, sanitary sewer, waterline, utility poles, etc.)
  - g. Compliance with traffic control plan, temporary lane reductions, and closures
- B. Pre-placement inspections are required for pavement, pavement restoration, curb and gutter, drive approaches, and sidewalks. A pre-placement inspection must be requested at least 48 hours in advance.
- C. At the time of inspection, the Public Works Director, Utilities Director, or their designee may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The Public Works Director may issue a violation order to the permittee for any work which does not conform to the applicable standards, conditions, code or terms of this permit. The violation order shall state that failure to correct the violation will be cause for revocation of the permit.

## **12-1008. Permit Fees**

- A. The right-of-way permit fee will be recommended by the Public Works Director, approved by the City Council and listed in the schedule of fees maintained in the City Clerk's office.
- B. No right-of-way permit shall be issued prior to the payment of such fees.
- C. Fees paid for a permit, which is subsequently revoked by the Public Works Director for a breach of this Chapter, are not refundable.

## **12-1009. Performance Bonds and Liability Insurance Certificates**

- A. The permittee shall provide a performance and maintenance bond and liability insurance certificate as listed in the schedule of fees maintained in the City Clerk's office.

- B. All performance and maintenance bonds provided will be held for one year while the permittee is responsible for damage or failure of work in the right-of-way.
- C. No performance bond or liability insurance certificate will be required of any governmental utility or of any residential property that does not utilize a contractor to perform the excavation.

#### **12-1010. Right-of-Way Repair and Restoration**

- A. The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates specified in the permit. However, in the event of extraordinary circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the Public Works Director may increase the dates for completion of the project by as many days as work was delayed.
- B. The permittee shall repair its own work at no expense to the City or any of the City's agents, representatives or authorized contractors.
- C. All backfilling and restoration work will be the responsibility of the permit holder and requires inspection by the Public Works department.
- D. The Permittee shall return the right-of-way to its original condition to the satisfaction of the Public Works Director and shall remove all rubbish and debris promptly following completion of construction and before final inspection by the city. If final inspection determines corrective measures are necessary, such corrective measures shall be initiated within ten (10) days and promptly completed by Permittee.
- E. The City of Osawatomie shall bill Permittee and Permittee agrees to pay the City of Osawatomie the cost to repair or replace any City utility infrastructure damaged by Permittee or Permittee's employees or agents. City infrastructure shall include, but not be limited to, water, sewer, sidewalks, utility poles, storm sewer, curbs and gutters, and traffic control devices.
- F. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Public Works Director or fails to satisfactorily and timely complete all restoration required by the Public Works Director, the Public Works Director may choose to complete such work. In such an event, the permittee shall pay to the City the costs associated with restoration of the right-of-way.

#### **12-1011. Protective Measures**

- A. Staff will review each right-of-way permit application to determine if a traffic control plan will be required. If required, the traffic control plan must be submitted and approved before the right-of-way permit will be issued.

- B. Coordination with Public Works staff is required for all work that includes temporary lane reductions or closures. The permittee must notify staff a minimum of 48-hours in advance of scheduled temporary lane reductions or closures. Immediate notification is required for unscheduled emergency maintenance operations that include temporary lane reductions or closures.
- C. Workers are required to follow all applicable safety regulations, including wearing approved safety apparel at all times. The Permittee shall be responsible for establishing safety measures to protect the public from any and all harm until construction is complete and for compliance with OSHA.

**12-1012. Abandoned and Unusable Facilities**

Abandoned facilities should be removed when possible. When abandoned facilities cannot be removed the permittee and/or utility owner should clearly denote or mark facilities as abandoned.

**12-1013. Penalties**

The penalty for working in the right-of-way without a valid permit will be equal to double the fee of obtaining the permit and work will cease until a valid permit can be obtained.

**SECTION 2. EFFECTIVE DATE.** This ordinance shall take effect and be in force after one publication in the official City newspaper.

**PASSED AND APPROVED** by the Governing Body of the City of Osawatomie, Kansas, this 13<sup>th</sup> day of April, 2023, a majority voting in favor of.

**APPROVED** and signed by the Mayor.

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Nick Hampson, Mayor

(SEAL)  
ATTEST:

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Tammy Seamands, City Clerk