

ORDINANCE NO. 2655

AN ORDINANCE APPROVING THE DESCRIPTION AND SURVEY OF LANDS NECESSARY FOR CONSTRUCTING, RECONSTRUCTING AND MAINTAINING OF PUBLIC UTILITY IMPROVEMENTS, DESIGNATED IN RESOLUTION 1990.

WHEREAS, the City of Gardner, Kansas owns and operates a municipal electric utility for the public benefit of supplying its residents and other customers electric power and light;

WHEREAS, it is necessary to acquire easements on, over, through and under private properties for the construction of certain public improvements in support of the City's electric utility, which properties are situated both within and outside of the corporate city limits;

WHEREAS, the City is authorized to exercise eminent domain for the purpose of acquiring such easements pursuant to Article 12, Section 5 of the Kansas Constitution, K.S.A. 26-201, et seq., and K.S.A. 12-845 for the purposes herein stated;

WHEREAS, the Governing Body of the City adopted Resolution No. 1990 declaring it necessary to acquire by condemnation the aforementioned easements and directing that a survey and description of the lands or interests to be acquired be prepared by the City Engineer and filed with the City Clerk;

WHEREAS, surveys describing a temporary construction easement and a permanent easement have been completed and filed as directed by Resolution No. 1990.

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

SECTION ONE: The description and survey of lands necessary to acquire a temporary construction easement for the purpose to enter upon, excavate, fill, grade, locate, construct, and install or authorize such activities for the location, and construction of utility lines, conduits, poles, wires, ducts, cables, facilities and appurtenances, etc., together with the right of access to said easement and over said easement for said purposes as prepared by the City Engineer or designee and filed with the City Clerk pursuant to Resolution No. 1990, adopted by the Governing Body of the City of Gardner, Kansas, is hereby approved.

SECTION TWO: The description and survey of lands necessary to acquire a permanent and perpetual easement for the purpose to enter upon, excavate, fill, grade, locate, construct, install and maintain, or authorize such activities for the location, construction or maintenance, and use of utility lines, conduits, poles, wires, ducts, cables, facilities and appurtenances, etc., including the right to clean, repair, replace, and care for said facilities, together with the right of access to said easement and over said easement for said purposes as prepared by the City Engineer or designee and filed with the City Clerk pursuant to Resolution No. 1990, adopted by the Governing Body of the City of Gardner, Kansas, is hereby approved.

SECTION THREE: The action of the Governing Body of the City of Gardner, Kansas in acquiring the temporary construction easement and the permanent utility easement as herein described has been declared necessary by the Governing Body.

SECTION FOUR: The acquisition of the temporary construction easement and the permanent utility easement as herein described for the construction, reconstruction and

maintenance of certain public improvements in support of the City's electric utility is all in accordance with and under the provisions of Chapter 26 of the Kansas Statutes Annotated.

SECTION FIVE: That there is hereby declared to be public necessity to acquire by eminent domain proceedings for the purpose of construction, reconstruction and maintenance of certain public improvements in support of the City's electric utility the lands hereinafter described:

PINNACLE CONSTRUCTION CO., INC. – TRACT NO. 1

FEE SIMPLE OWNER: Pinnacle Construction Co., Inc.

PARTIES IN POSSESSION: Pinnacle Construction Co., Inc.

SITUS ADDRESS: No common address.

JOHNSON COUNTY PARCEL ID NUMBER: CF221435-3001

KANSAS UNIFORM PARCEL ID NUMBER: 0461373501002011010

LIENHOLDERS:

Thomas G. Franzen, in his capacity as the Finance Director & County Treasurer of Johnson County, Kansas (Attn: Treasury & Financial Management)

AND

Hawthorn Bank

EASEMENT HOLDERS:

Kansas City Power & Light, easement holder.

AND

Southwestern Bell Telephone Co., easement holder.

OTHER INTERESTED PARTIES:

Gas and Oil Operations, holder of oil and gas lease.

AND

The unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of such parties as may be deceased, the unknown spouses of such parties and the unknown guardians and trustees of such parties as are minors or in anywise under legal disability, the unknown officers, successors, trustees, creditors and assigns of such parties as are existing, dissolved or dormant corporations, the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of such defendants as are or were partners or in partnership, and all known persons who claim any interest in and to the aforementioned real estate.

Temporary Construction Easement Description:

All that part of the Northeast Quarter of Section 35, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northeast Quarter of said Section 35; thence South 0 degrees 34 minutes 54 seconds West, a distance of 20.00 feet; thence South 89 degrees 29 minutes 30 seconds East, parallel with the North line of the Northeast Quarter of said Section 35, a distance of 15.00 feet to the point of beginning; thence continuing South 89 degrees 29 minutes 30 seconds East, parallel with the North line of the Northeast Quarter of said Section 35, a distance of 497.00 feet to a point on the West line of Fairfield, a subdivision of land in the City of Gardner, Kansas; thence South 0 degrees 30 minutes 30 seconds West, along the West line of said Fairfield, a distance of 20.00 feet to the Northwest corner of Lot 17 of said Fairfield; thence North 89 degrees 29 minutes 30 seconds West, parallel with the North line of the Northeast Quarter of said Section 35, a distance of 476.62 feet; thence South 0 degrees 34 minutes 54 seconds East, parallel with the West line of the Northeast Quarter of said Section 35, a distance of 2512.15 feet; thence North 87 degrees 19 minutes 02 seconds East, a distance of 1075.47 feet; thence South 0 degrees 42 minutes 41 seconds East, a distance of 20.01 feet; thence South 87 degrees 19 minutes 02 seconds West, a distance of 1095.52 feet; thence North 0 degrees 34 minutes 54 seconds West, a distance of 2553.29 feet, to the point of beginning, containing 1.89 acres, more or less.

Permanent Easement Description:

All that part of the Northeast Quarter of Section 35, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northeast Quarter of said Section 35; thence South 0 degrees 34 minutes 54 seconds West, a distance of 40.01 feet to the point of beginning; thence South 89 degrees 29 minutes 30 seconds East, parallel with the North line of the Northeast Quarter of said Section 35, a distance of 511.62 feet to the Northwest corner of Lot 17 of Fairfield, a subdivision of land in the City of Gardner, Johnson County, Kansas; thence South 0 degrees 30 minutes 30 seconds West, along the West line of said Lot 17, a distance of 15.00 feet; thence North 89 degrees 29 minutes 30 seconds West, parallel with the North line of the Northeast Quarter of said Section 35, a distance of 496.34 feet; thence South 0 degrees 34 minutes 54 seconds East, parallel with the West line of the Northeast Quarter of said Section 35, a distance of 2518.28 feet; thence North 87 degrees 19 minutes 02 seconds East, a distance of 1095.52 feet; thence South 0 degrees 42 minutes 41 seconds East, a distance of 15.01 feet to a point on the North line of an existing easement to Kansas City Power & Light, recorded in Book 1766, Page 649; thence South 87 degrees 19 minutes 02 seconds West, along the North line of said Kansas City Power & Light Easement, a distance of 1110.57 feet to the West line of the Northeast Quarter of said Section 35; thence North 0 degrees 34 minutes 54 seconds West, a distance of 2549.13 feet to the point of beginning, containing 1.43 acres, more or less.

SECTION SIX: The City Attorney for the City of Gardner, Kansas is hereby directed, authorized and instructed to make proper application to a Judge of the District Court of Johnson County, Kansas, for the acquisition of the aforementioned temporary construction and permanent utility easements for the purpose of construction, reconstruction and maintenance of certain public improvements in support of the City's electric utility, praying for condemnation thereof and the appointment of three disinterested residents of the County to assess and to

determine the damages and compensation resulting from such compensation and for such other proceedings as may be required by law.

SECTION SEVEN: 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 6th day of April, 2020.

SIGNED by the Mayor this 6th day of April, 2020.

/s/
Steve Shute, Mayor

(SEAL)

ATTEST:

/s/
Sharon Rose, City Clerk

APPROVED AS TO FORM:

/s/
Ryan B. Denk, City Attorney