

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPELL, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 6, “BUSINESS REGULATIONS”, ARTICLE 6-14, “CERTAIN USES OF PUBLIC RIGHT-OF-WAY”, TO PROVIDE REGULATIONS CONCERNING INSTALLATION OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY BY NETWORK PROVIDERS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) PER VIOLATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Coppell finds that it is authorized as a home-rule city to adopt regulations applicable to the installation of wireless network nodes and related equipment in the City’s rights-of-way by Network Providers; and

WHEREAS, the City Council for the City of Coppell finds that it is in the best interest of the city to amend its code of ordinances to provide revisions applicable to the use of the City’s public right-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPELL, TEXAS:

SECTION 1. That the Code of Ordinances of the City of Coppell, Texas is amended by amending Chapter 6, “Business Regulations”, amending Article 6-14, “Certain Uses of Public Rights-of-Way”, to read as follows:

“ARTICLE 6-14. CERTAIN USES OF PUBLIC RIGHTS-OF-WAY

Sec. 6-14-1. Definitions.

Backfill means

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

Network Provider means a wireless service provider, or a person that does not provide wireless services and that is not an electric utility but builds or installs, on behalf of a wireless service provider, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

Project means

Provider means a person, including any certificated telecommunications utility and excluding Network Providers, as defined herein, that delivers telecommunications service within the city to person(s) by way of a network and that places facilities in, on or over the public rights-of-way. A provider does not include persons who are authorized by the city to occupy the public rights-of-way in specifically approved routes within the city, unless they also have a municipal consent under this chapter. To the extent allowed by law, provider also means a person that does not deliver telecommunications service within the city, but who uses, constructs or maintains facilities or transmission media within the public rights-of-way.

Public Rights of Way means

Transport Facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Wireless service means any service using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless services to the public.

....

Sec. 6-14-5. – Permit required; exceptions; conditions; denial and revocation.

A. A person shall. . . .

C. A permit is not required under subsection A if the activity in the public right-of-way consists exclusively of:

(1) A connection of real property

....

(3) Installation of Network Nodes and related equipment, provided such equipment is installed pursuant to Chapter 284 of the Local Government Code and Section 6-14-15, “Certified Telecommunication Providers and Network Providers,” of this Chapter.

D. The following procedures

Sec. 6-14-6. – Insurance and indemnity requirements; exceptions.

....

(F) A person that is a certificated telecommunications provider as defined in Chapter 283 of the Texas Local Government Code, or a network provider as defined in Chapter 284 of the Local Government Code, as amended, shall provide to the city the indemnity provided in Section 283.057, Texas Local Government Code, as amended.

....

Section 6-14-15. Certified Telecommunication Providers and Network Providers.

A. *Authority required/nonexclusive use.* All CTPs must provide evidence that the CTP has acquired authorization from the PUC pursuant to state law, prior to obtaining a permit to use public right-of-way. The right to use and occupy the public right-of-way shall not be exclusive, and the city shall have the right to exercise its police powers and manage its public right-of-way, based on all other state or federal laws.

B. *Permit for Installation of Wireless Facilities.* A Network Provider may not install network nodes or node support equipment in any public right-of-way until a permit to do so has been issued by the City.

C. *Prohibited or Restricted Areas for Wireless Facilities in the Right-of-Way.* A Network Provider may not install a new Node Support Pole in a Municipal Park, unless permission is given by the City Manager; or in a right-of-way that contains a street that is equal to or less than 50 feet wide, measuring curb-to-curb, and is adjacent to developed or undeveloped single-family residential lots, other multifamily residential area or land that is designated for residential use by zoning or deed restrictions.

D. A CTP and network provider shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's or Network Provider's business within 30 days of such sale, transfer, merger or assignment. A CTP or Network Provider shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the CTP or Network Provider uses the right-of-way.

E. *Fees*

1. CTPs and Network Providers are exempted from the following fees provided for in this article:

a. Permit application fee, including expedited application fee and permit expiration fee;

b. Additional permit fee;

c. Registration fee.

2. *Network Provider Fees*

a. *Annual Network Node Rate.* Network Providers shall pay the City an annual Network Node Rate for each Location for which Network Provider has obtained Permit(s) for the installation of Network Nodes, regardless of whether or not a Network Provider installs Network Nodes in the Public Right-of-Way. The amount of the Annual Network Rate shall be set in the City's Master Fee Schedule. The annual Network Node Public Right-of-Way Rate payment for the first year at any Location ("Initial Annual Network Node Payment") begins accruing when the permit is issued and is due 30 days after Network Provider obtains a Permit to install or collocate a Network Node at the Location.

The Initial Annual Network Node Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date.

b. *Subsequent Years Annual Network Node Rate Due Date.* The annual Network Node Public Right-of-Way Rate for every year after the Initial Annual Network Node Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

c. *Annual Network Node Rate Adjustment.* The City may adjust the annual Network Node Public Right-of-Way Rate by an amount equal to one-half the annual change in the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. The City shall provide written notice to each Network Provider of the new rate, and the rate shall apply to the first payment due to the municipality on or after the 60th day following that notice.

d. *Annual Colocation on Service Pole Attachment fee.* Network Provider shall pay the City annually \$20 for each Network Node Permitted to be colocated on a City Service Pole for each Location for which Network Provider has obtained Permit(s) to co-locate a Network Node on a Service Pole, regardless of whether or not a Network Provider colocates a Network Node on a Service Pole. This fee is due 30 days after Network Provider obtains a Permit to install or colocate a Network Node at the Location. The Initial Annual Colocation on Service Pole Attachment Fee Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date. The annual Colocation on Service Pole attachment fee for every year after the Initial Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

e. *Monthly Transport Fee.* To the extent Network Provider has Transport Facilities Permitted from the Network Nodes in the Public Right-of-Way it shall pay the City a monthly Transport Facilities fee on a quarterly basis, in the amount set in the City's Master Fee Schedule, which begins accruing when the permit is issued. This Transport Facility fee is in addition to any annual Network Node Public Right-of-Way Rate payment required by Ch. 284, Section 284.053.

f. *Application and Permit Fees.* Network provider shall pay the City the application and permit fees set forth in the City's Master Fee Schedule contemporaneously with the submittal of the application for the permits.

F. *Compliance with Design Manual.* A network provider shall comply with the city *Design Manual for the Installation of Network Nodes and Node Support Poles*, as amended.

G. *Certificates of Operation*

1. As part of the application process for the installation of network nodes, the Network Provider must certify that the proposed network node will be placed into active commercial service

by or for a network provider no later than the 60th day after the date the construction and final testing of the network node is completed.

2. An updated certification of active service must be submitted annually, by no later than December 31st, with or prior to payment of the applicable annual fee(s).

3. If the Network Provider is not in active commercial service for a period in excess of sixty (60) consecutive days, the equipment will be deemed abandoned and the permit will be revoked. The network provider will be required, within ninety (90) days from notification from the City, to remove the equipment at the network provider's sole expense."

H. *Review Process*

1. No later than the 30th business day after the date the city receives an application for a permit for a network node or node support pole, or the 10th business day after the date the city receives an application for a permit for a transport facility, the city shall determine whether the application is complete and notify the applicant of that determination. If the city determines that the application is not complete, the city shall identify the missing information.
2. The city will approve or deny an application for a node support pole not later than the 150th business day after the date the city receives a complete application. The city will approve or deny an application for a network node not later than 60th business day after the date the city receives a complete application. The city will approve or deny an application for a transport facility not later than 21st business day after the date the city receives a complete application.
3. Not later than the 30th business day after the date the city denies the application, the applicant may cure the deficiencies identified in the denial documentation and resubmit the application without paying an additional application fee, other than a fee for actual costs incurred by the municipality. After the applicant resubmits the application, the city will approve or deny the resubmitted application not later than the 90th business day after the date the city receives the completed application. The city's review of the resubmitted application will be limited to the deficiencies cited in the denial documentation.
4. Business day means Monday through Friday, excepting local, state or federal holidays."

SECTION 2. That all provisions of the ordinances of the City of Coppell in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Coppell not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Coppell, Texas, on the _____ day of _____, 2017.

APPROVED:

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY