

ORDINANCE NO. 2382

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AMENDING CHAPTER 18 OF THE CODE OF ORDINANCES BY ADDING A NEW ARTICLE VI, SECTIONS 18-100 TO 18-123, ENTITLED "PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE" FOR THE CITY OF THE COLONY, TEXAS; REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY WIRELESS SERVICES (SMALL CELL) DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of The Colony, Texas (hereinafter referred to as the "City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

WHEREAS, Chapter 284 of the Texas Local Government Code ("the Code") allows certain wireless network providers to install in the City's public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as "Micro Network Nodes", "Network Nodes", and "Node Support Poles"; and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City has enacted a *Wireless Services (Small Cell) Design Manual* ("the Design Manual") in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Council desires to regulate the installation of Network Nodes and Network Support Poles pursuant to Chapter 284 of the Code in a way that is fair, reasonable and nondiscriminatory.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF THE COLONY, TEXAS THAT:

SECTION 1. FINDINGS INCORPORATED

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. That Chapter 18 of the Code of Ordinances, City of The Colony, Texas, is hereby amended by adding a new Article VI, Sections 18-100 to 18-123, entitled "Public Right-of-Way Management Ordinance" which shall read as follows:

"ARTICLE VI. PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE"

Sec. 18-100. PURPOSE.

The purpose of this chapter is to:

- (a) Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy and maintenance of its public rights-of-way by wireless network providers;
- (b) Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and
- (c) Assist the City in protecting the public health, safety, and welfare.

Sec. 18-101. GOVERNING LAW.

This Article shall be construed under and in accordance with Chapter 284 of the Texas Local Government Code ("the Code") to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

Sec. 18-102. DEFINITIONS.

For the purpose of this Article, the definitions found in the *Wireless Services Design Manual for the Installation of Network Nodes and Node Support Poles* ("the Design Manual") are hereby incorporated into this Article and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this Article:

Applicable codes means:

- (a) the City uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (b) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of The Colony, Texas or its lawful successor.

City Council means the municipal governing body of the City of The Colony, Texas.

Chapter 284 means Texas Local Government Code, Chapter 284.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a public right-of-way on or adjacent to a pole.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory City codes and ordinances.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Director means City's Director of Engineering.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Facilities means the plant and equipment of a public utility or network provider and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public utility or network provider.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City-approved and lawfully permitted location for the Network Node. Mayor means the mayor of the City of The Colony, Texas, or designee.

Micro network node means a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity.

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

- (a) Includes:
 - (1) equipment associated with wireless communications;
 - (2) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (3) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (b) does not include:
 - (1) an electric generator;
 - (2) a pole; or
 - (3) a macro tower.

Network Provider means:

- (a) a wireless service provider, or
- (b) a person that does not provide wireless services and that is not an electric utility but builds or installs following items on behalf of a wireless service provider:
 - (1) Network Nodes, or
 - (2) Node Support Poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a Network Node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the city before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, City-owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as "Network Provider"

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- (a) a private easement; or
- (b) the airwaves above a public right-of-way with regard to wireless telecommunications.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City and located in a public right-of-way, including:

- (a) a pole that supports traffic control functions;
- (b) a structure for signage;
- (c) a pole that supports lighting, other than a decorative pole; and
- (d) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A "Street" is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A "Street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

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.

User means a person or organization, which conducts a business over facilities occupying

the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (a) Electric Distribution with a voltage rating of not more than 34.5 kilovolts; or
- (b) Services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

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 service to the public.

Wireless facilities mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code, Chapter 284.

Sec. 18-103. CRIMINAL PENALTIES

- (a) Any violation or failure to abide by, and comply with, any provision or requirement of this Ordinance shall be violation of City Ordinance, and shall be punished by a fine of \$1.00 to \$2000.00
- (b) Each day upon which there exists a violation of this chapter, or a failure to abide by, or comply with, any provision or requirement of this chapter, shall constitute a separate occurrence, and may subject the offender to separate criminal penalties.
- (c) Prosecution pursuant to this section is in addition to and does not supplant other remedies.
- (d) Prior to initiation of enforcement litigation, the User shall be given the opportunity to correct the violation within the timeframe specified by the Director.

Sec. 18-104. CIVIL PENALTIES

- (a) Civil penalties may be imposed for the violation of any provision of this Chapter, as follows:
 - (1) Up to one thousand dollars (\$ 1,000.00) for each violation, and each day of a continuing violation may be considered a new violation; and/or
 - (2) If applicable, default and revocation of any or all permits granted to allow work in the right-of-way, subject to the procedural guidelines noted in this Chapter and any agreement which applies to the right-of-way User, and further subject to any limitation imposed by federal or state law.
- (b) In imposing the penalties and the amount, the City may weigh all applicable factors, such as damages caused by the violation, reasons for the violation, the seriousness of the

violation, and all other factors.

- (c) Monetary civil penalties may be imposed in the manner prescribed by either local or state law.
- (d) In addition, the Director may order specific performance of any actions required by this chapter or required by a franchise, license or permit, including the permit authorizing work to be performed in the right-of-way, or any other agreement or authorization.
- (e) Prior to initiation of enforcement litigation, the User shall be given the opportunity to correct the violation within the timeframe specified by the Director.

Sec. 18-105. RIGHT-OF-WAY CONSTRUCTION

No person shall commence or continue with the construction, installation, maintenance or operation of facilities within the right-of-way in the City except as provided by the ordinances of the City and the directives of the City's Engineering Department. All construction activity in City right-of-way will be in accordance with this ordinance.

Sec. 18-106. USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY.

Pursuant to this Article and subject to the Wireless Services (Small Cell) Design Manual and the Code, a wireless network provider has the nonexclusive right to use and occupy the public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless facilities. The terms of this Article shall apply to all wireless network providers' facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later.

Sec. 18-107. COMPLIANCE WITH DESIGN MANUAL AND APPLICABLE CODE

All wireless network providers shall comply with the terms of this right-of-way management ordinance, City applicable codes, and the terms and condition of the City's Wireless Services (Small Cell) Design Manual.

Sec. 18-108. GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS

A network provider shall construct and maintain Network Nodes and Network Support Poles described in the Code in a manner that does not:

- (a) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- (b) Obstruct the legal use of a public right-of-way by other utility providers;
- (c) Violate nondiscriminatory applicable codes;
- (d) Violate or conflict with the City's publicly disclosed public right-of-way design

specifications; or

- (e) Violate the federal Americans with Disabilities Act of 1990 (ADA).

Sec. 18-109. REGISTRATION AND CONSTRUCTION PERMITS.

- (a) *Registration.* In order to protect the public health, safety and welfare, all Users constructing, installing, maintaining or operating Facilities in the right-of-way will register with the Director. Registration and permits will be issued in the name of the entity that owns or will own the Facilities. When any information provided for the registration changes, the User will inform the Director in writing no more than thirty (30) days after the date the change is made.

Registration shall include:

- (1) The name of the User of the right-of-way;
- (2) The name, address and telephone number of people who will be contact person(s) for the User;
- (3) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the User;
- (4) The name(s) and telephone number of an emergency contact who shall be available 24 hours a day;
- (5) Proof of insurance and bonds, as follows:
 - (A) An applicant must provide proof of liability insurance in the amount of six million dollars (\$6,000,000); one million dollars (\$ 1,000,000.00) primary plus five million dollars (\$5,000,000.00) umbrella or other securities as acceptable to the Director.
 - (B) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.
 - (C) Each policy must include a cancellation provision in which the insurance company is required to notify the city in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
 - (D) The applicant shall file, with the Director, the required original certificate of insurance showing the City as an additional insured prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone

number of insured; policy expiration date; and specific coverage amounts.

- (E) Applicant shall file a surety bond which will be valid prior to the commencement of any construction through two (2) full years after the completion of the construction from a surety company authorized to do business in the State of Texas in the amount of the estimated amount of the value of the work to be performed that year to guarantee that the restoration of the right-of-way in the event the applicant leaves a job site in the right-of-way unfinished, incomplete or unsafe.

Proof of insurance requirements may be met by utilities with a current franchise or license agreement which provides for insurance or bonds at least in the amounts enumerated above, or where the current franchise or license agreement provides an indemnity in favor of the City.

Sec. 18-110. PERMIT APPLICATIONS

No person shall perform any construction, maintenance or installation of Facilities, whether aboveground or underground, in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who owns or will own the Facilities to be constructed, maintained, repaired, or upgraded. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.

- (a) Except as otherwise provided in Chapter 284 of the Code, a network provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public right-of-way.
- (b) As required by Chapter 284 of the Code, the City shall not require a network provider to perform services for the City for which the permit is sought.
- (c) A network provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.
- (d) The network provider shall provide the following information in its permit applications:
 - (1) The person requesting a permit will provide the Director with documentation in the format specified by Director describing:
 - (A) The proposed, approximate location and route of all Facilities to be constructed or installed and the applicant's plan for right-of-way construction.
 - (B) Engineering plans at a scale not to exceed one inch (1") equals one hundred feet (100') unless otherwise approved by the Director.

- (C) Details of the location of all right-of-way and utility easements that applicant plans to use.
- (D) Details of all existing City utilities in relationship to applicant's proposed router.
- (E) Details of what applicant proposes to install, such as pipe size, number of interducts, valves, etc.
- (F) Details of plans to remove and replace asphalt or concrete in streets, driveways, alleys and sidewalks.
- (G) Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth.
- (H) Handholes and/or manholes typical of the type of manholes and/or handholes applicant plans to use or access.
- (I) Complete legend of drawings submitted by applicant. Applicant may submit a standard legend for all permit applications, provided the applicant submits updated or revised versions of the standard details.
- (J) Five (5) sets of plans must be submitted with the permit application.
- (K) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
- (L) The construction and installation methods and materials to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the right-of-way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Director.
- (M) A statement that proof of insurance, bond other required financial information is current in file.
- (N) A Traffic Control Plan.
- (O) Detailed emergency procedures and a list of "on-call" contacts.
- (P) A statement of compliance with the NPDES stormwater permit requirements and other provisions of the federal Clean Water Act.
- (Q) Example photo of standalone node poles to be utilized and stealth method

to be utilized.

- (2) For nodes attached to City poles include an industry standard pole with a load analysis report to verify the pole can support the additional load. All construction and installation in the right-of-way shall be in accordance with the permit for the Facilities. The Director shall be provided access to the work and to such further information as he may reasonably require to ensure compliance with the permit.
- (3) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Director at all times when construction or installation work is occurring.
- (4) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the right-of-way User may request an extension from the Director.
- (5) A copy of any permit or approval issued by federal or state authorities for work in federal or state rights-of-way located in the City shall be maintained at the construction site and made available for inspection by the Director at all times when construction or installation work is occurring.
- (6) A request for a permit, complete with all information required under this section, must be submitted at least ten (10) working days before the commencement of work proposed in the request, unless waived by the Director.
- (7) The Director may require a pre-construction meeting with the right- of-way User and the User's construction contractor.
- (8) Requests for permits will be approved or disapproved by the Director promptly after receiving all necessary information.
- (9) Requests for installation of Network Nodes, Node Support Poles and related ground equipment shall comply with the requirements within the city's Wireless Services Design Manual.
- (10) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this Article;
- (11) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the sixty (60) days after the date of construction and final testing of each Network Node is completed.
- (12) A certificate of insurance that provides that the Network Provider and its contractor has

at least one million (\$1,000,000.00) general liability coverage.

- (e) *Exceptions:* As provided in Section 284.157 of the Code, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:
- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
 - (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
 - (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code; or
 - (4) Notwithstanding Subsection (d) above, the Network Provider or its contractors shall notify the City at least 24 hours in advance of work described in this Subsection (d).

Sec. 18-111. INSTALLATION IN HISTORIC DISTRICTS OR DESIGN DISTRICTS

A network provider must obtain advance written consent from the Director of Engineering before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Wireless Services (Small Cell) Design Manual. The City has the authority to designate new historic districts and design districts at a future date.

Sec. 18-112. INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS

A network provider may not install a new Node Support Pole in a public right-of-way without the City Council's discretionary, nondiscriminatory and written consent if the public right-of-way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
 - (A) Not more than fifty (50) feet wide; and
 - (B) Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (3) In addition to the above, a network provider installing a Network Node or Node Support Pole in a public right-of-way shall comply with private deed restrictions and

other private restrictions in the area that apply to those facilities.

- (4) The network provider shall be further required to comply with guidelines set out in the City's Wireless Services (Small Cell) Design Manual.

Sec. 18-113. CONSTRUCTION STANDARDS

- (a) No person shall construct or install, or cause to be constructed or installed, Facilities within the right-of-way, which constitute a threat or hazard to public safety, either for vehicular or pedestrian traffic.
- (b) Unless otherwise specifically allowed in writing by the Director, all excavations within the right-of-way shall be filled and compacted within twenty-four (24) hours of excavation and pavements of streets, alleys and sidewalks shall be completely restored within fourteen (14) days of excavation.
- (c) The Director must be notified twenty four (24) hours in advance that construction is ready to proceed by either the right-of-way User or User's contractor or representative. Notification shall include the reference number assigned to excavation by the one-call system.
- (d) All construction shall be in conformance with all City codes and applicable local, state and federal laws.
- (e) Three feet by three feet information signs, stating the identity of the person doing the work on the Facilities, telephone number and User's identity and telephone number, shall be placed in the right-of-way on each approach to the location where construction is to occur twenty-four (24) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring.
- (f) Erosion control measures and advance warning signs, markers, cones and barricades must be in place before work begins.
- (g) Reflective barricades and flashing lights must be restored at the end of each day.
- (h) Without affecting any contractual relationship between the User and its contractors, the right-of-way User shall be responsible for the workmanship and any damages by their contractors and subcontractors. A responsible representative of the User will be available to the Director at all times during construction.
- (i) The right-of-way User shall be responsible for storm water management and erosion control that complies with city, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing in erosion areas until vegetation is restored, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing.
- (j) User or User's contractor or subcontractor shall notify the Director immediately of any damage to other utilities, whether owned by City or privately owned.

- (k) User must not interfere with City utilities, in particular gravity dependent Facilities.
- (l) When a street, alley or sidewalk cut is required, prior approval must be obtained by the Director and all of the Director's requirements shall be followed. Repair of all street, alley and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (m) Cutting or excavation of street, alley or sidewalk surfaces that are less than five (5) years old is prohibited, unless approved by Director.
- (n) All directional boring shall have locator place bore marks and depths while bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem. No wet bores are allowed.
- (o) Lane closures in school zones or on streets other than residential streets will be limited to after 8:30 a.m. and before 4:00 p.m. unless prior approval is obtained from the Director. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and reflector cones placed according to the specifications of the City's General Design Standards and Part 6 of the Texas Manual on Uniform Traffic Control Devices.
- (p) Working hours in the rights-of-way not involving traffic lane closures are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work which must be performed before 7:00 a.m. or after 6:00 p.m. Monday through Friday must be approved by the Director in advance. Any work performed outside the above work hours must be approved twenty- four (24) hours in advance by the Director. Directional boring is permitted only Monday through Friday 7:00 a.m. to 6:00 p.m., unless approved by the Director in advance. No work may be done, except for emergencies, on City holidays.
- (q) Users are responsible for obtaining line locations from all affected utilities at least forty-eight (48) hours prior to any excavation.
- (r) Right-of-way User will be responsible for verifying both the horizontal and vertical location of all affected Facilities whether by potholing, hand digging, or other method approved by the Director prior to any excavation or boring with the exception of work involving lane closures, as discussed above.
- (s) Placement of all handholes, manholes or other access Facilities must be approved in advance by the Director.
- (t) Installation of Network Nodes, Nodes Support Poles and related ground equipment shall be in compliance with the City's Wireless Services (Small Cell) Design Manual.

Sec. 18-114. "PLANS OF RECORD" PLANS

- (a) Right-of-way Users will provide the Director with "plans of record" within thirty (30) days

of completion of Facilities in the right-of-way.

- (b) Users with existing Facilities in the rights-of-way as of the effective date of this ordinance shall submit within thirty (30) days of the effective date of this ordinance, a plan to provide complete plans of record in not more than three hundred (300) days after the effective date of this ordinance.
- (c) The plans of record shall be provided to the City in the format specified by the Director and contain as much detail and accuracy as required by the Director. All the criteria specified for plans submitted for the initial permit will be required for the plans of record.
- (d) Submittal of plans of record shall be in digital format as well as written.
- (e) Right-of-way Users shall, not later than January 31 of each year, submit updated plans of record which incorporate all changes, additions, abandonments, and relocations of facilities completed in the previous calendar year. The annual update of the plans of record shall be in the format prescribed by the Director.

Sec. 18-115. CONFORMANCE WITH PUBLIC IMPROVEMENTS

Whenever by reason of reconstruction, widening or straightening of streets, replacement of water or sewer lines, traffic signals, traffic signs and markings or any other public works projects, it shall be deemed necessary by the Director to remove, alter, change, adapt, or conform the underground or overhead Facilities or network nodes of a right-of-way User, such alterations shall be made by the owner of the Facilities at the owner's expense to the extent allowable by law, within ninety (90) days from issuance of notice to the User to make the alterations, unless a different schedule has been approved by the Director. Facilities not moved after thirty (30) days written notice or within the approved schedule shall be deemed abandoned.

Sec. 18-116. IMPROPERLY INSTALLED, REPAIRED, OR MAINTAINED FACILITIES

- (a) Any User of the City right-of-way shall properly install, repair, upgrade and maintain Facilities.
- (b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
 - (1) The installation, repair, upgrade or maintenance endangers public health, safety and welfare.
 - (2) The facilities encroach upon private property or extend outside the right-of-way location assigned by the City's General Design Standards;
 - (3) Above ground facilities located within the right-of-way are less than 1.5 feet from the face of curb, or within six (6) inches of a sidewalk;
 - (4) The Facilities do not meet the applicable state, federal, or local laws;

- (5) The Facilities are not capable of being located or maintained using standard practices;
- (6) The Facilities are placed in an area that interferes with another user's facilities. Nothing in this section shall diminish the authority of the Director to require specific placement of specific lines.

Sec. 18-117. TYPE OF FACILITIES

- (a) The Director may require or approve the location of facilities underground.
- (b) When poles are used, the type of poles, location, depth, upgrades; etc. shall be subject to the approval of the Director.
- (c) The Director shall approve the size of Facilities to be installed or require User to prove its need to install any particular size of Facilities, which are the subject of User's request for a permit.

Sec. 18-118. RESTORATION OF PROPERTY

- (a) Users with Facilities in the right-of-way shall restore property affected by construction, repair, maintenance, installation, or upgrade of Facilities to a condition that is equal to or better than the most recent specification of the City of The Colony General Design Standards and Wireless Services Design Manual. Restoration must be approved by the Director.
- (b) Restoration must be to the reasonable satisfaction of the Director. The restoration shall include, but not be limited to:
 - (1) Replacing all ground cover equal to the type of ground cover damaged during work or better either by sodding or seeding as required by Director;
 - (2) Installation of all manholes and handholes are required;
 - (3) All bore pits, potholes, trenches or any other excavations shall be backfilled and compacted daily unless other safety requirements are approved by the Director;
 - (4) Street and sidewalk repair that conforms with the General Design Standards;
 - (5) Levelling of all trenches and backhoe lines;
 - (6) Restoration of excavation site to City's Specifications;
 - (7) Restoration of all landscaping, ground cover, and sprinkler systems;

- (8) Changes to nodes, poles, service poles, node support poles, or utility poles.
- (c) All locate flags shall be removed during the cleanup process by the User at the completion of the work.
- (d) Restoration must be made in a timely manner and to the satisfaction of Director. If restoration is not satisfactory or not performed in a timely manner, then all of right-of-way User's work in progress, (except for that work related to the problem), will be halted and no other permit will be approved until all restoration is complete. The hold on right-of-way User's work will include work previously permitted but not complete.

Sec. 18-119. MUNICIPAL REVIEW PROCESS BY THE CITY.

- (a) *Determination of Application Completeness:* The City shall determine whether the permit application is complete and notify the applicant of that determination:
 - (1) *For Network Nodes and Node Support Poles:* no later than thirty (30) days after the date, the City receives the permit application.
 - (2) *For a Transport Facility.* No later than ten days (10) after the date the City receives the permit application.
- (b) *Approval or Denial of Application:* The City shall approve or deny a completed application after the date it is submitted to the City.
 - (1) *For Network Nodes.* No later than sixty (60) days after the date the City receives the complete application.
 - (2) *For Network Support Poles:* No later than one hundred fifty (150) days after the date the City receives the complete application.
 - (3) *For Transport Facilities.* No later than twenty (21) days after the City receives the complete application.
- (c) *Basis for Denial of Application:* If an application is denied by the City, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.
- (d) *Resubmission of Denied Application:* The applicant may cure the deficiencies identified in the denial application.
 - (1) The applicant has thirty (30) days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the

City.

- (2) The City shall approve or deny the revised completed application after a denial no later than the 90th day after the City receives the revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.
- (e) *Nondiscriminatory Review*: Each completed application shall be processed by the City on a nondiscriminatory basis.

Sec. 18-120. TIME OF INSTALLATION

A network provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. The City Mayor may in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

Sec. 18-121. APPLICABLE FEES AND RENTAL RATES TO THE CITY.

- (a) As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.
- (b) FEE SCHEDULE

For the purposes of this subsection only, the following definition shall apply:

Facilities. The term "facilities" includes any and all structures and equipment installed in or on the public rights-of-way and includes property owned, operated, leased, licensed, used, controlled, or supplied by, for, or in connection with any person.

Person. The term "person" includes any corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

Rights-of-way: The term "right-of-way" means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by or under the control of the city, in which the city holds the property rights.

Each person, other than a certificated telecommunications provider, as that term is defined in §283.002 of the Texas Local Government Code, or a wireless service provider, as the

term is defined in §284.002 of the Texas Local Government Code, or a governmental entity providing just compensation pursuant to an interlocal agreement, shall pay to the city, on an annual basis, \$1.00 per linear foot of city's right-of-way occupied by said person's facilities, plus an annual fee of \$1,000.00 per public street crossing, such amounts to be payable in advance of the construction, installation, purchase, use, lease, operation, or control of any facilities in the right-of-way.

No public utility holding a franchise agreement with the City providing for different terms of compensation shall be required to pay the fee designated herein.

Pursuant to Chapter 284 of the Texas Local Government Code, the follow Fees shall apply:

Application Fee:

Network Nodes (first 5 nodes) \$500/node

For each additional node from 6 up to 30 in the same
Application \$250/node

Node Support Pole \$1000/Pole

Annual Rental Fee:

Network Nodes \$250/node

Pole Attachment Rent \$20/pole
(Network Node on Service Pole)

*Transfer Facility \$28 per month/Each
Network Node

*No rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

** During a partial year, fees will be prorated based on the city's Fiscal year.

As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). 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 City on or after the 60th day following the written notice. Based line rate is February 2017 (CPI-U = 243.603)

The fees charged under this article shall have no effect on Network Providers operating within the City under a preexisting public right-of-way agreement or similar agreement in

effect prior to the effective date of this Ordinance.

Sec. 18-122. INDEMNITY

As provided in Section 284.302 of the Code, a Wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions ("claims") covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

Sec. 18-123. EFFECT ON OTHER UTILITIES AND TELECOMMUNICATION PROVIDER

Nothing in this Article shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.”

SECTION 3. PENALTY CLAUSE

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

SECTION 4. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. REPEALER CLAUSE

Any provision of any prior ordinance of the City whether codified or uncodified, which are in

judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

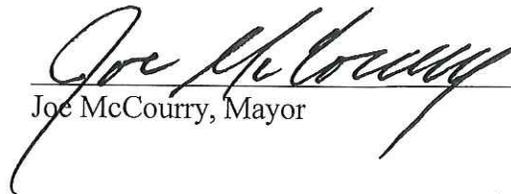
SECTION 5. REPEALER CLAUSE

Any provision of any prior ordinance of the City whether codified or uncodified, which are in conflict with any provision of this Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 6. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage and publications as required by law.

PASSED AND APPROVED by the City Council of the City of The Colony, Texas, this 17th day of July, 2018.



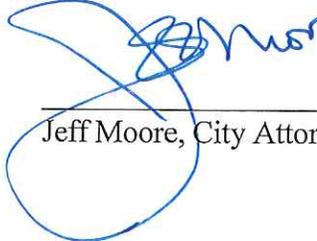
Joe McCourry, Mayor

ATTEST:



Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:



Jeff Moore, City Attorney

