

ORDINANCE NO. 6928

AN ORDINANCE AMENDING CHAPTER 51, ARTICLE VII, "USE OF RIGHT-OF-WAY BY PUBLIC UTILITIES", OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS; PROVIDING A PENALTY UNDER THE PROVISIONS OF SEC. 10.05 OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND; PROVIDING A SAVINGS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

Section 1

That Section 51.103 of Chapter 51, Article VII "Use of Right-of-Way by Public Utilities" of the Code of Ordinances of the City of Garland, Texas is hereby amended in part by replacing the following definition to read as follows:

"Director means Director of Engineering of the City, or his designee."

And by adding the following definition to read as follows:

"Design Manual means the most recent approved Wireless Utilities in Public Rights-of-way Design Manual."

Section 2

That Section 51.105(A) of Chapter 51, Article VII "Use of Right-of-Way by Public Utilities" of the Code of Ordinances of the City of Garland, Texas is hereby amended to read as follows:

"(A) No person shall commence or continue with the construction, installation, maintenance, or operation of facilities or equipment within any right-of-way in the City except as provided by City Ordinance and the directives of the Director. All construction and maintenance activity within a City right-of-way must be in accordance with this Code, the Design Manual, and state and federal law."

Section 3

That Sections 51.107 (C), (D), (E), (F), (G), and (H) of Chapter 51, Article VII "Use of Right-of-Way by Public Utilities" of the Code of Ordinances of the City of Garland, Texas are hereby respectively amended to read as follows:

"(C) Any person performing work in the City's rights-of-way shall pay an annual license fee in the amount of \$400.00. This licensing requirement shall not apply to:

- (1) Employees of a certificated telecommunications provider ("CTP") performing work on behalf of the employing CTP;
- (2) Employees of wireless network providers constructing, maintaining, or operating a network node or transport facilities;
- (3) Employees of a holder of a state-issued certificate of franchise authority performing work on behalf of the holder;
- (4) Employees of a person having a franchise agreement with the City while performing work on behalf of that person;
- (5) Persons working in the City's rights-of-way on behalf of the City; and
- (6) Persons performing minor landscaping, maintenance, irrigation, or similar activities as determined by the director.

(D) Application Fees. A wireless network provider desiring to construct, maintain, or operate a network node, pole, or transport facility within a City right-of-way shall pay \$500.00 per application covering up to five network nodes, \$250.00 for each additional network node per application, and \$1000.00 per application for each pole.

(E) Annual Right-of-Way Rates for Network Nodes. Wireless network providers constructing, maintaining, or operating a network node in a right-of-way within the City shall pay an annual public right-of-way rate in the amount of \$250.00 per node within the City's corporate boundaries or the maximum amount allowed under state law, as amended, including any consumer price index adjustments. The annual public right-of-way fee shall be due no later than January 31st of each year. For new installations, the annual public right-of-way fee shall be pro-rated as of the date of the permit.

(F) Monthly Right-of-Way Rate for Transport Facilities. Wireless network providers constructing, maintaining, or operating *transport facilities*, as defined by Chapter 284 of the Texas Local Government Code, as amended, in a right-of-way within the City shall pay a monthly right-of-way use rate in the amount of \$28.00 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed

transport facilities provide backhaul unless or until the time the network provider's payment of fees to the City exceed its monthly aggregate per-node compensation to the City, or the maximum amount allowed under state law. The fee will be assessed at the time the electric meter servicing the network node is activated.

(G) Annual Service Pole Rate. Wireless network providers desiring to construct, maintain, or operate network nodes on service poles, as defined by Chapter 284 of the Texas Local Government code, must enter into a service pole collocation agreement with the City, and pay a service pole rate of \$20.00 per year per service pole, or the maximum amount allowed under state law. The service pole rate is in addition to any other public right-of-way rate authorized under this Chapter or state law.

(H) Permits are not transferable to another user or another location, unless authorized by state or federal law."

Section 4

That Section 51.113(D) of Chapter 51, Article VII "Use of Right-of-Way by Public Utilities" of the Code of Ordinances of the City of Garland, Texas is hereby amended to read as follows:

"(D) Restoration activity must be commenced upon completion of construction or within 14 calendar days upon receiving written notification from the City. In the event restoration work does not meet the minimum requirements of this Section 51.113 and the applicable provisions of the Wireless Utilities in Public Rights-of-Way Design Manual, or is not performed within a reasonable time as determined by the Director, all work in progress, except that related to the problem, including all work previously permitted but not commenced or completed, may be halted and a hold may be placed on any permits not approved until all restoration activity is complete. In addition, the City shall be entitled to claim against user's surety bond, if any, to effect the restoration without further notice to user."

Section 5

That a violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Sec. 10.05 of the Code of Ordinances of the City of Garland, Texas.

Section 6

That Chapter 51, Article VII, "Use of Right-of-Way by Public Utilities" of the Code of Ordinances of the City of Garland, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 7

That the terms and provisions of this Ordinance are severable and are governed by Sec. 10.06 of the Code of Ordinances of the City of Garland, Texas.

Section 8

That this Ordinance shall be and become effective immediately upon and after its passage and approval.

PASSED AND APPROVED this the 15th day of August, 2017.

CITY OF GARLAND, TEXAS

Mayor

ATTEST:

City Secretary