

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 13 “STREETS AND SIDEWALKS,” ARTICLE III “MANAGEMENT OF PUBLIC RIGHTS-OF-WAY” REGARDING THE USE OF THE PUBLIC RIGHT-OF-WAYS WITHIN THE CITY; AMENDING THE MASTER FEE SCHEDULE TO PROVIDE FOR THE ADOPTION OF NEW FEES RELATED TO THE USE OF THE RIGHT-OF-WAY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, finds that the right-of-way, including but not limited to the streets, sidewalks and utilities located therein, are vital to the everyday life of its citizens, visitor and businesses; and,

WHEREAS, the City of Allen is responsible for conserving the limited physical capacity of the public rights-of-way which are held in public trust by the City for the benefit of its citizens, visitors, and businesses; and,

WHEREAS, the City’s Right-of-Way management ordinance is integral in managing facilities placed in, or over the public rights-of-way, and helps to minimize the congestion, inconvenience, visual impact and other adverse effects that can occur during construction in the rights-of-way, and to manage costs to the citizens resulting from the placement of facilities within the public rights-of-way; and to govern the use and occupancy of the public rights-of-way; and,

WHEREAS, the City Council finds that it is in the best interest of the City to amend the City’s Right-of-Way management provisions, in order preserve and protect the health, safety and welfare of the City of Richardson, Texas and its citizens, visitors, travelers, and businesses, to preserve the physical integrity of the streets and highways; and to control the orderly flow of vehicles and pedestrians; and to keep track of the different entities using the rights-of-way to prevent interference between them; and to assist in scheduling common trenching and street cuts; and to protect the safety, security, appearance, and condition of the public rights-of-way; and,

WHEREAS, the City Council, in the exercise of its legislative discretion, has concluded that the following amendments to the City’s Right-of-Way Management Ordinance and its Master Fee Schedule shall be approved in their entirety.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending Chapter 13 “Streets and Sidewalks” by amending Article III “Management of Public Rights-of-Way” to read as follows:

“ARTICLE III. Management of Public Rights-of-Way

Sec. 13-21. - Definitions.

For the purpose of this article, the following words shall be defined herein below:

Certificated Telecommunications Provider or “CTP” means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of

operating authority by the Texas Public Utility Commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code Ch. 283 or "the Act".

City means the City of Allen, Texas or its lawful successor, and its officers and employees.

City manager shall mean city manager or designee.

Construction means any work performed above the surface, on the surface or beneath the surface of a public right-of-way, including, but not limited to, installing, servicing, repairing, upgrading, or modifying any facility or facilities in, above or under the surface of the public right-of-way, and restoring the surface and subsurface of the public right-of-way, subject to the provisions of section 13-24(a). The phrase "construction" does not include the installation of facilities necessary to initiate service to a customer's property, or the repair or maintenance of existing Owner facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring.

Construction security means any of the following forms of security provided at the Owner's option:

- (1) Individual project or performance bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under State of Texas Statutes; or
- (4) Letter of credit, in a form acceptable by City.

Construction permit or permit means the permit which, pursuant to this article, must be obtained before an Owner may construct facilities in a right-of-way. A construction permit allows the holder to construct facilities in that part of the right-of-way described in such permit.

Department means the engineering department of the City.

Director means the director of the engineering department of the City or his or her designee.

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

Emergency means a condition that (1) poses a clear and immediate danger to life or health, or an immediate and significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Facility or Facilities shall include, but not be limited to, any and all cables, pipelines, splice boxes, tracks, tunnels, utilities, vaults, poles, network nodes, related ground equipment, and other appurtenances or tangible things owned, leased, operated, or licensed by an Owner or Owners, that are located or are proposed to be located in the right-of-way.

Location means the City approved and lawfully permitted location for the Facilities.

Municipal authorization means the individual grant to use the public rights-of-way issued by the City and accepted by the individual Owners in accordance with the ordinances of the City, a franchise agreement, a license, or under operation of state law which provides a specific grant of authority to use the rights-of-way.

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.

Owner means any person who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way. Included within this definition is the Owner's contractor, subcontractor, agent or authorized representative.

Permit means a document issued by the City authorizing installation, removal, modification, and other work for Provider's wireless facilities in accordance with the approved plans and specifications.

Person means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, excluding the City, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Restore or restoration means the process by which a right-of-way is returned to a condition that is equal to or better than the condition that existed before construction.

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 the City and supporting only network nodes.

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. 13-22. - Right-of-way occupancy.

- (a) Municipal Authorization or Agreement shall be required, except when clearly preempted by state law. Any person prior to constructing facilities in, on, or over the right-of-way, must first obtain separate municipal authorization.
- (b) This article does not constitute or create authority to place, reconstruct, or alter facilities in, on or over the rights-of-way nor to engage in construction, excavation, encroachments, or work activity within or upon any public right-of-way, and said authority must be obtained in accordance with the terms of this article.
- (c) Any person with a current, unexpired franchise, municipal authorization, license or other authorization from the City (grant) or state to use the public right-of-way that is in effect at the time this article takes effect, shall continue to operate under and comply with that grant, and in the event this ordinance conflicts with existing authorization, the more restrictive provision shall apply.
- (d) No facility shall be placed in, on, or over the right-of-way area occupied by North Texas Municipal Water District easement, within the FM 2551/Angel Parkway Public right-of-way from Main Street to the City of Allen southern City limit line.
- (e) Use of the city's right-of-way, by any individual or entity, is non-exclusive and subject to the applicable police powers of the City and state law, as amended.

Sec. 13-23. - Registration.

- (a) In order to protect the public health, safety and welfare, all Owners of facilities in the right-of-way will register with the City. Registration and permits will be issued in the name of the person who will own the facilities. Registration must be renewed on or before January 31 of each year. The City shall provide written notification of this renewal requirement. If a registration is not renewed, and subject to sixty (60) calendar days notification to the Owner, the facilities of the user will be deemed to have been abandoned. When any information provided for the registration changes, the Owner will inform the City of the change no more than thirty (30) days after the date the change is made. Registration shall include:
 - (1) The name, address(es) and telephone number(s) of the Owner;
 - (2) The names, address(es) and telephone number(s) of the contact person(s) for the Owner;
 - (3) The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the right-of-way on behalf of the Owner. If

the names of contractors and subcontractors are not available at the time of permit application, they must be submitted to the City prior to permit issuance;

- (4) The name(s) and telephone number(s) of an emergency contact who shall be available twenty-four (24) hours a day;
- (5) The source of the Owner's municipal authorization (e.g., franchise, state law, etc.). If the Owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission;
- (6) Registration shall be a prerequisite to issuance of a construction permit. Each Owner shall update and keep current its registration with the City at all times.

Sec. 13-24. - Construction permits.

(a) General.

- (1) An Owner shall not install, modify, or relocate a Facility within the public right-of-way without first obtaining a Right-of-Way Permit from the City.
- (2) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the department shall be notified in writing within two (2) business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the right-of-way. An updated map of any facilities that were relocated, if applicable, shall be provided within ninety (90) days.
- (3) A permit is not required under subsection (1) if the activity in the public right-of-way consists exclusively of:
 - a. A residential service connection on the same side of the public right-of-way, if the connection does not require a pavement cut; or
 - b. The replacement of an existing, single-damaged Owner facility that does not require boring.
- (4) Unless approved by the City engineer, the Owner or contractor shall not close any traffic lanes or otherwise impede traffic on major thoroughfares weekdays prior to 9:00 a.m. or after 3:30 p.m. Any closure of a traffic lane for more than four hours shall also require a permit, unless waived by the director.
- (5) 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 or she may reasonably require to ensure compliance with the permit.
- (6) 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 work is occurring.

- (7) No Owner or contractor shall perform construction, excavation, or work in an area larger or at a location different than that specified in the permit or permit application. If, after construction, excavation, or work has commenced under an approved permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application, the Owner or contractor shall notify the director immediately and, within twenty-four (24) hours, shall file a supplementary application for the additional construction, excavation, or work.
- (8) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the City of Allen shall be provided, if requested by the director.

(b) *Permit application.*

- (1) The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions set out by the director. If the Owner fails to act upon any permit within ninety (90) calendar days of issuance, Owner may request an extension of the time period from the director. The director will use his/her best efforts to approve or disapprove a request for extension as soon as possible. No permit shall be transferable.
- (2) The permit will be in the name of the person who will own the facilities to be constructed. The permit application must be completed and signed by a representative of the Owner of the facilities to be constructed or authorized Owner contractor.
- (3) Prior to requesting a permit, the City Engineering Department shall be contacted to obtain record drawings and City utility mapping to include existing City utilities in design plans.
- (4) Any person requesting a permit will provide the director with documentation in the format specified by the department, at the time of permit submittal, describing:
 - a. The proposed location and route of all facilities to be constructed or installed and the Owner's plan for right-of-way construction.
 - b. One (1) set of engineering plans, including plan and profile, which will be on a reasonable scale, acceptable to the department, unless waived by the director. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas.
 - c. Detail of the location of all right-of-way and utility easements that Owner plans to use.
 - d. Detail of existing utilities located in the right-of-way, including the City's utilities, in relationship to Owner's proposed route.
 - e. Detail of what Owner proposes to construct including size of facilities, materials used, such as pipe size, number of ducts, valves, etc. f. Detail of

plans to remove and replace asphalt or concrete in streets in accordance with current City standard specifications and details for restoration within public rights-of-way.

- g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc., including depth located in public right-of-way.
 - h. Typical details of manholes and/or handholes Owner plans to use or access.
 - i. Complete legend of drawings submitted by Owner, which may be provided by reference to previously submitted documents acceptable to the City.
 - j. The construction methods 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.
 - k. Proof of insurance and bonds as required by section 13-35.
- (5) A request for a permit must be submitted at least fifteen (15) business days before the proposed commencement of work identified in the request, unless waived by the director.
- (6) Requests for permits will be approved or disapproved by the director within a reasonable time of receiving all the necessary information. The director will use his/her best efforts to approve or disapprove a request for permit as soon as possible. The director will consider all information submitted by the applicant including a review of the availability of space in the right-of-way based on the applicant's proposed route and location. The director will provide a written notification of denial for rejected permits.
- (7) The construction contractor must be available for a pre-construction meeting if requested by the director or the Owner, prior to commencement of permit work activities.

Sec. 13-25. - Construction standards.

- (a) Owner shall, at its own cost and expense, install the Facilities in a good and workmanlike manner and in accordance with the requirements promulgated by the city manager, as such may be amended from time to time. Owner's work shall be subject to the regulation, control and direction of the city manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Facilities shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").
- (b) The department must be notified a minimum of two (2) business days in advance that construction is ready to proceed by either the Owner, its contractor or representative. At the time of notification, the Owner will inform the department of the name, address and phone numbers of the contractor or subcontractor who will perform the project 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.

- (c) Public notification of work to be performed.
 - (1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting six (6) days or less, the permittee shall conspicuously mark its vehicles with the Owner's name and the permittee's name and telephone number.
 - (2) For projects scheduled to last seven (7) calendar days or more, a three (3) foot by three (3) foot informational sign stating the identity of the person doing the work, a local telephone number and Owner's identity shall be placed at the location where construction is to occur forty-eight (48) 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. The informational sign will be posted for public viewing on public right-of-way one hundred (100) feet away from the construction location, unless other posting arrangements are approved or required by the director.
 - (3) When projects last seven (7) calendar days or more, the Owner shall also provide written notification to all adjacent property occupants forty-eight (48) hours prior to the beginning of construction. Informational fliers shall include the contractor's name performing the work, a local telephone number, Owner's identity, specific restoration intentions, and proposed schedule.
- (d) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.
- (e) Lane closures on major thoroughfares will be limited to one (1) lane between 9:00 a.m. and 3:30 p.m. unless the director grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed. All traffic control shall be installed in accordance with the Texas Manual on Uniform Traffic Control Devices, current edition.
- (f) Without affecting the legal relationship between the owner and their contractor, Owners are responsible for the workmanship of, and any damages by, their contractors or subcontractors. A responsible representative of the Owner will be available to the department at all times during construction.
- (g) Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with City, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation, silt fencing in erosion areas until permanent groundcover established, barricade fencing around open holes, and wire backed silt fencing for high soil erosion areas. Upon request, Owner may be required to furnish documentation submitted or received from the federal or state government.
- (h) Owner or contractor or subcontractor will notify the department immediately of any damage to other utilities, either City or privately owned in addition to other notifications required by law.

- (i) It is the City's policy not to cut streets or sidewalks; however, except in case of emergency when a street or sidewalk cut is required, prior approval must be obtained from the department and all requirements of the department shall be followed in all street and sidewalk cuts. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with City of Allen standard construction details.
- (j) Installation of facilities must not interfere with City utilities, in particular gravity dependent facilities. Facilities shall not be located over, or within three (3) feet, horizontally or vertically, of any water or sanitary sewer mains, or five (5) feet horizontally and vertically for water lines over 12" diameter in size, unless approved by the director. Conduit facilities must cross existing City utilities at ninety (90) degree angles, unless approved by the director.
- (k) New facilities must be installed to a minimum depth required by state and federal codes and standards.
- (l) All directional boring shall have a locator place bore marks and depths while the boring activity is in progress. Locator shall place a mark at each stem with a paint dot and depth at least every other stem.
- (m) In the City, the public infrastructure must be maintained and protected by all Owners and contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no person, agency, or contractor will be allowed to directionally bore longitudinally with water mains and sewer mains that are twelve (12) inches or larger, unless this requirement is waived in writing by the director. The installation of facilities in the public rights-of-way or easements will be installed by open excavation to assure the protection of the City's water and sewer system. The Owner is responsible for obtaining and using available City record drawings and mapping information in the design of new facilities.
- (n) When boring near water lines larger than twelve (inches), City representative must be onsite.
- (o) The working hours in the rights-of-way are 7:00 a.m. to 8:00 p.m., Monday through Friday, unless otherwise approved by director. Any work performed on Saturday must be approved by the director by 9:00 a.m. on the Thursday prior to the proposed Saturday. No work will be done, except for emergencies, on Sundays or City holidays. No boring activities near City facilities shall begin after noon on Fridays or day prior to holiday.
- (p) Persons working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of a geographic information system or the plans of records does not satisfy this requirement.
- (q) Owner will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the department, Owner shall verify locations by pot holing, hand digging or other method approved by the department prior to any excavation or boring. City representative must be present when pot holing water lines larger than twelve (12) inches.

- (r) Placement of all manholes and/or handholes must be approved in advance of construction by the department. Handholes or manholes will not be located in sidewalks, leadwalks or paved roadways, unless approved by the director.
- (s) Locate flags shall not be removed from a construction area while facilities are being constructed.
- (t) When construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the department.
- (u) A person shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public right-of-way. The City shall waive the requirements of trenchless technology if it determines that field conditions warrant the waiver, based upon information provided to the City by the Owner or their representative. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A person shall follow all reasonable construction directions given by the City in order to minimize any such interference.
- (v) All construction shall conform to the City of Allen tree preservation ordinance.
- (w) On construction projects in which excavation will exceed a depth of five (5) feet, the Owner, contractor or representative thereof must provide a trench safety plan and affidavit of competent person to the City. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with state law and Occupational Safety and Health Administration (OSHA) standards and regulations.
- (x) All Network Providers constructing wireless network nodes in the City's right-of-way must comply with the City's *Design Manual for the Installation of Network Nodes and Node Support Poles*, as amended.

Sec. 13-26. – Record drawing plans.

- (a) Owner shall maintain accurate maps and other appropriate records of its Owner facilities as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Owner will provide additional maps to the City upon request.
- (b) If record drawing plans submitted under this section include information expressly designated by the Owner as a trade secret or other confidential information protected from disclosure by state law, the director may not disclose that information to the public without the consent of the Owner, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, V.T.C.A., Government Code ch. 552, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an Owner to designate all matters in its as-built plans as confidential or as trade secrets.

Sec. 13-27. - Conformance with public improvements.

- (a) Whenever by reasons of widening or straightening of streets, sidewalks, water or sewer line projects, or any other City project, it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform an Owner's underground or overhead facilities within the right-of-way to another part of the right-of-way, such alterations shall be made by the Owner of the facilities at the Owner's expense (unless provided otherwise by state law, a franchise, a license or a municipal authorization until that grant expires or is otherwise terminated). The Owner shall be responsible for conforming their facilities within mutually agreed upon time limits. The Owner must reply within five (5) days of receipt of notification from the City of need to relocate to agree to the date of notification offered by the City, or to propose an alternate date; if no response is received it will be presumed that Owner agrees to the City's relocation date. If no time limits can be agreed upon, the time limit shall be ninety (90) days from the day the City secures any additional right-of-way or transmits construction drawings and notice by email to make the alterations by a specified date. The Owner of facilities shall be responsible for any direct costs associated with project delays associated with failure to conform facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this paragraph shall be made within thirty (30) calendar days.
- (b) An Owner may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the national arborist association and the International Society of Arboriculture. Should the Owner, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days.
- (c) An Owner shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other structures. The Owner shall temporarily remove, raise or lower its aerial facilities within fifteen (15) working days of receiving a copy of a permit issued by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Owner may require prepayment or prior posting of a bond from the party requesting the temporary move.
- (d) Owner shall repair any damage to the public right-of-way and the property of any third party resulting from Owner's removal or relocation activities or any other of Owner's activities within ten (10) days following the date of such removal, relocation, or activity, at Owner's sole cost and expense, including restoration of the public right-of-way and such other property to substantially the same condition as it was immediately before the date Owner was granted a permit for the applicable location, including restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to the sole approval of the City.

Sec. 13-28. - Improperly installed facilities.

- (a) Any Owner doing work in 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 people or property;

- (2) The facilities do not meet applicable City codes;
- (3) The facilities are not capable of being located using standard practices;
- (4) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the department or the plans approved by the department.

Sec. 13-29. - Utility structures.

- (a) Utility structures not exceeding twenty (20) cubic feet are allowed in the right-of-way or utility easements, subject to available room and located as approved by the director. The placement of utility structures larger than twenty (20) cubic feet, but not exceeding thirty (30) cubic feet will be reviewed on a case by case basis by the director. Such structures shall not encroach within a sidewalk area, including a vertical clearance of ten (10) feet above the sidewalk, or within any existing or proposed City site visibility triangles.
- (b) Utility structures larger than thirty (30) cubic feet shall be located as close as practical to the back of a public or private utility easement and subject to available room and located as approved by the director.
- (c) Above-ground facilities such as pedestals, switching boxes and similar facilities shall be located no less than three (3) feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway or alleys. They shall also not be located in front of residential lots creating an unreasonable visual or aesthetic impairment for the property Owner.
- (d) The Owner's identity and telephone number shall be placed on all utility structures placed in the rights-of-way.
- (e) In order to minimize negative visual impact to the surrounding area and to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Owner installs Facility ground equipment where existing ground equipment within 300 feet already occupies a footprint of 15 sq. ft. or more.
- (f) Colors in Historic Districts and Design Districts must be approved by the city manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the Facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.
- (g) The Owner facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

- (h) Electrical meters shall not be mounted on a service pole, decorative pole or other City-owned or -controlled structure. Standalone electrical meters shall be located on or within a pad-mounted pedestal enclosure that is powder coated dark bronze. Owner shall provide a key (#2195) to each meter upon inspection by City. All electrical meters serving network nodes must display the Owner's name and contact information.

Sec. 13-30. - Restoration of property.

- (a) Owners shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Owners shall submit photographs and/or a video of the construction area at the time of the issuance of the permit. Restoration must be approved by the department.
- (b) Restoration must be made within ten (10) working days of completion of trench backfill for a length of three hundred (300) feet, or within the limits of one City block, unless otherwise approved by the director. If restoration is not satisfactory and performed in a timely manner, after written notice all work in progress, except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any future permits until all restoration is complete.
- (c) Upon failure of an Owner to perform such restoration, and five (5) days after written notice has been given to the Owner by the City, and in the event restoration has not been initiated during such five-day period, the City may repair or cause to be repaired such portion of the public rights-of-way as may have been disturbed by the Owner, its contractors or agents. Upon receipt of an invoice from the City, the Owner will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.
- (d) If the City determines that the failure of an Owner to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the City, the Owner shall promptly reimburse the City for the costs incurred by the City within thirty (30) calendar days from the date of the City invoice. If payment is not received within the thirty (30) calendar days, the City shall initiate a claim for compensation with the appropriate bonding company.
- (e) Should the City reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet the standards of subsection (a), an Owner shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies as provided herein.
- (f) Restoration must be performed to the reasonable satisfaction of the department. The restoration shall include, but not be limited to:
 - (1) Replacing all ground cover with the same type of ground cover damaged during work to a condition equal to or better than existing either by sodding or seeding, or as directed by the department;
 - (2) Adjusting of all manholes and handholes, as required;

- (3) Backfilling all bore pits, potholes, trenches or any other holes, including compaction to a density of 90% standard proctor, shall be completed daily, unless other safety requirements are approved by the department. Holes with only vertical walls shall be covered and secured to prevent entry. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded to secure the work site as approved by the department;
- (4) Leveling of all trenches and equipment tread impressions into the earth;
- (5) Restoration of excavation site to City specifications;
- (6) Restoration of all disturbed areas, including but not limited to paving, sidewalks, landscaping, ground cover, trees, shrubs and irrigation systems.
- (g) Removal of all locate flags during the clean up process by the Owner or his/her contractor at the completion of the work. Locate paint markings shall be removed upon request.

Sec. 13-31. - Revocation or denial of permit.

If any of the provisions of this ordinance are not followed, a permit may be revoked by the director or designee. If an Owner, contractor or representative has not followed the terms and conditions of this article for work done pursuant to a prior permit, new permits may be denied or additional terms required. Revocation shall be effective upon the expiration of fifteen (15) days after written notice of the violation(s), unless cured during that period, except for violations which pose a threat to public safety or health, for which the revocation will be immediate upon delivery of written notice.

Sec. 13-32. - Appeals.

- (a) Appeals may be filed pursuant to this section for decisions of the director related to the denial, suspension, or revocation of a permit. However, the appeal process provided by this section shall not be available for criminal violations of this article.
- (b) A permittee may appeal decisions referred to in Section 13-32, subsection (a) above by filing a written appeal with the city manager within seven (7) working days of receipt of denial, suspension, or revocation of the permit. An appeal filed pursuant to this section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this article.
- (c) Decisions of the city manager shall be issued within five (5) working days of receipt of the written appeal. Decisions of the city manager shall be final.

Sec. 13-33. - Penalty for violation.

Any person, firm or corporation violating any of the provisions or terms of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not exceeding two thousand dollars (\$2,000.00) for each violation. Each day such violation shall continue to exist constitutes a separate offense.

Sec. 13-34. - Indemnity.

- (a) With the exception of CTPs and Network Providers, each Owner placing facilities in the public rights-of-way shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses:
 - (1) For the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the Owner's acts or omissions,
 - (2) From and against any and all claims, demands, suits, causes of action, and judgements for:
 - a. Damage to or loss of the property of any Owner (including, but not limited to the Owner, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or
 - b. Death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Owner (including, but not limited to the agents) arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Owner, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.
- (b) This indemnity provision shall not apply to any liability resulting from the negligent or willful acts of the City, its officers, employees, agents, contractors, or subcontractors.
- (c) The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other Owner or entity.

Sec. 13-35. - Insurance requirements.

- (a) *General.*
 - (1) With the exception of CTPs, an Owner must provide acceptable proof of insurance in the total amount required by this section for permits for construction within public rights-of-way, or make other provisions acceptable to the director.
 - (2) 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.
 - (3) 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.
 - (4) The Owner shall file the required original certificate of insurance prior to the issuance of a permit. 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.

- (5) Owner shall file an annual surety bond, which will be valid for one (1) full year, from a surety company authorized to do business in the State of Texas in the amount equal to the estimated amount of the cost to restore the right-of-way for the work anticipated to be done in that year, in the event the Owner leaves a job site in the right-of-way unfinished, incomplete or unsafe. Owner may make other provisions, in lieu of a bond, as acceptable to the director. The director may waive the requirement if the Owner submits documentation, in a form acceptable to the City attorney, that demonstrates the Owner has assets in excess of ten million dollars (\$10,000,000.00).
 - (6) Owner shall file a maintenance bond for twenty-five (25) percent of the cost of restoring the right-of-way for the preceding year. Said bond shall be in force for two (2) years. Owner may make other provisions, in lieu of a bond, as acceptable to the director. The director may waive the requirement if the Owner submits documentation, in a form acceptable to the City attorney, that demonstrates the Owner has assets in excess of ten million dollars (\$10,000,000.00).
 - (7) The above requirements (1—6) may be met by utilities with a current franchise, license or municipal authorization if their current franchise, license or municipal authorization adequately provides for insurance or bonds or provides an indemnity in favor of the City.
 - (8) The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the state does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the risk manager for the City.
 - (9) An insurer has no right of recovery against the City. The required insurance policies shall protect the agency or public infrastructure contractor and include the City as an additional insured. The insurance shall be primary coverage for losses covered by the policies.
 - (10) Each policy must include a provision that requires the insurance company to notify the City in writing at least thirty (30) days before canceling or failing to renew the policy or before reducing policy limits or coverages.
- (b) *Insurance requirements.*
- (1) Each Owner applying for a permit shall obtain, maintain, and provide proof of the each of the following types of insurance and coverage limits:
 - a. Commercial general liability on an occurrence form with minimum limits of five million dollars (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. This coverage shall include the following:
 1. Products/completed operations to be maintained for one (1) year;
 2. Personal and advertising injury;

3. Owners and contractors protective liability; and
 4. Explosion, collapse, or underground (XCU) hazards.
- b. Automobile liability coverage with a minimum policy limits of one million dollars (\$1,000,000.00) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
 - c. Workers compensation and employers liability coverage. Statutory coverage limits for coverage A and five hundred thousand dollars (\$500,000.00) coverage B employers liability is required.
- (2) Each contractor and sub-contractor identified in a permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in Section 13-35 (b), subsection 1 above; however, the policy limits under the general liability insurance shall be one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate. All other coverages provisions outlined in subsection 1 above shall apply.
 - (3) An Owner or contractor that has registered under section 13-23 of this article and filed proof of insurance is not required to furnish separate proof of insurance under this section when obtaining a permit but must comply with all other requirements of this section.

Section 13-36. – Courtesy and proper performance.

Owner shall make citizen satisfaction a priority in using the Right-of-Way. Owner shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Facilities in the Right-of-Way. Owner's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the city manager or designee, Owner is not interacting in a positive and polite manner with citizens, he or she shall request Owner to take all remedial steps to conform to these standards.

Sec. 13.37. – Removal for safety and imminent danger reasons.

- (1) Owner shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Facilities within the time frame and in the manner required by the city manager if the city manager reasonably determines that the disconnection, removal, or relocation of any part of a Facility (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Facility, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Owner fails to obtain all applicable licenses, Permits, and certifications required by Law for its Facilities, or use of any Location under applicable law. If the city manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Facilities at the Owner's sole cost and expense.

- (2) The city manager shall provide 90 days written notice to the Owner before removing a Facilities under this Section, unless there is imminent danger to the public health, safety, and welfare.
- (3) Owner shall reimburse City for the City's actual cost of removal of Facilities within 30 days of receiving the invoice from the City.

Sec. 13-38. – Graffiti abatement.

As soon as practical, but not later than fourteen (14) calendar days from the date Owner receives notice thereof, Owner shall remove all graffiti on any of its facilities located in the Right-of-way. The foregoing shall not relieve the Owner from complying with any City graffiti or visual blight ordinance or regulation.

Sec. 13-39. – Owner's responsibility.

Owner shall be responsible and liable for the acts and omissions of Owner's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub Owner's and subcontractors in connection with the installations of any Facility, as if such acts or omissions were Owner's acts or omissions

Sec. 13.40. – Ownership.

No part of a Facility placed on the Right-of-Way by Owner will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Facilities constructed, modified, erected, or placed by Owner on the Right-of-Way will be and remain the property of Owner and may be removed by Owner at any time, provided the Owner shall notify the city manager prior to any work in the Right-of-Way.

Sec. 13.41. – Drug Policy.

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Owner's employees, contractors, subcontractors, sub-Owner's, or vendors while on City rights-of-way is prohibited.

Sec. 13.42. - Certified Telecommunication Providers and Network Providers.

- (a) Authority required/nonexclusive use. 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) All CTPs must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use public right-of-way. All Network Providers shall obtain a permit from the City for installation of Network Nodes in the public right-of-way. 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.

(c) *Fees*

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

- a. ROW Construction 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 colocate 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 Collocated on a City Service Pole for each Location for which Network Provider has obtained Permit(s) to colocate a Network Node on a Service Pole, regardless of whether or not a Network Provider collocates 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.

(d) *Indemnity*

A CTP and Network Provider shall indemnify the city as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended.

(e) *Compliance with this Ordinance and the Design Manual*

A network provider shall comply with the provisions of this Right-of-Way Management Ordinance as well as the city's Design Manual for the Installation of Network Nodes and Node Support Poles, as amended.

(f) *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.

Secs. 13-43 – 13-50. – Reserved.”

SECTION 2. The Master Fee Schedule for the City of Allen is hereby amended to reflect the adoption of new fees applicable to the use of the Right-of-Way, to read as follows:

Network Node Installation Type	Permit Application Fee	Network Node Rental Fee
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Utility Pole (Non-City Owned)	N/A	N/A
Transport Facility	N/A	\$28 per Month per Node
Service Pole (City Owned)	\$500 for the first 5 Nodes; \$250 for each additional node; limit of 30 nodes total.	\$250 per Year per Node (plus annually allowed CPI adjustment)
Node Support Pole	\$1,000 per Pole	\$250 per Year per Node (plus annually allowed CPI adjustment)

Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 5. This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 22ND DAY OF AUGUST 2017.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(aga:8/14/17:89119)

Shelley B. George, TRMC, CITY SECRETARY