

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 AMEND THE 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 previously adopted its Right of Way management ordinance and finds that its necessary to amend this ordinance, as well as the fees for Network Providers, to comply with recently enacted federal rules; 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. 13.42. - Certified Telecommunication Providers and Network Providers.

(a) Authority required/nonexclusive use. . . .

(b) *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. *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.
- e. *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*

...
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
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; \$100 for each additional node; limit of 30 nodes total.	\$270 per Year per Node (plus annually allowed CPI adjustment)
Node Support Pole	\$1,000 per Pole	\$270 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. The City of Allen does expressly reserve the right to amend these fees, in the event the Federal Communications Commission Declaratory Ruling and Third Report Order, and/or Chapter 284 of the Texas Local Government Code, is amended or rescinded.

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 27TH DAY OF NOVEMBER 2018.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(aga:11/2/18:104049)

Shelley B. George, TRMC, CITY SECRETARY