

ORDINANCE NO. 1143-11-17

A PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE BY THE CITY OF HONDO, 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 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 REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF NOVEMBER 13, 2017.

WHEREAS, the City of Hondo, Texas ("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 *Design Manual for the Installation of Network Nodes and Node Support Poles* ("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 OF THE CITY OF HONDO, TEXAS that Article 13 of the Municipal Code of the City of Hondo shall be amended by adding the following Section that will read as follows:

Article 13.10 – WIRELESS INTERNET SERVICE AND RIGHT OF WAY NETWORK NODE REGULATIONS

Section 13.10.001 Purpose and Scope of Right of Way Network Node Regulations

(A) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of node support poles in the right-of-way and network nodes in the public right-of-way and on service poles within the City's jurisdiction, which will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the City public right-of-way and the City as a whole.

(B) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by network nodes, including without limitation, ensuring that network nodes or node support poles do not adversely affect:

- (1) Use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) Vehicular and pedestrian traffic;
- (3) The operation of facilities lawfully located in public right-of-way or public property;
- (4) The ability of the City to protect the environment, including the prevention of damage to trees;
- (5) The character of residential and historic areas, and city parks, in which network nodes may be installed; and
- (6) The rapid deployment of network nodes to provide the benefits of wireless services.

(C) Conflicts with Other Chapters. This Chapter supersedes all Chapters, parts of Chapters or rules adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Section 13.02.002 – Definitions

All terms used in this Chapter, not specifically defined herein, have the meaning provided in Chapter 284 of the Texas Local Government Code.

- (A) “City Code” means those ordinance provisions relevant to use of the public right-of-way where compliant with applicable law.
- (B) “Applicable Law” means Chapter 284 of the Texas Local Government Code.
- (C) “Applicant” means any person who submits an application and is a network provider.
- (D) “Application” means a request submitted by an applicant (i) for a permit to collocate network nodes; or (ii) to install a transport facility; or (iii) approve the installation, replacement or modification of a pole.
- (E) “Day” means calendar day.
- (F) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (G) “Routine Maintenance” means (i) work in the public right-of-way that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; (ii) replacing or upgrading a network node or 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; or (iii) the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles, in the public right-of-way.

(H) "Technical Grounds" means, in light of prevailing industry and engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with applicable law and City Code.

Section 13.02.003 – Permitted Use; Application and Fees

- (A) Permitted Use: Collocation of network nodes and the placement of node support poles, meeting the parameters set forth in Section 5 below and in applicable law, shall be a permitted use. No zoning or land use review shall apply, subject to the requirements in Section 5.
- (B) Permit Required. No person shall place a network node, transport facility or node support pole in the public right-of-way, without first filing a City of Hondo Right-Of-Way Permit Application and obtaining a permit therefore, except as otherwise provided in this Chapter.
- (C) Permit Application. All City of Hondo Right-Of-Way Permit Applications filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.
- (D) Application Requirements. The City of Hondo Right-Of-Way Permit Application shall be made by the network provider or its duly authorized representative and shall contain the following:
 - (1) The Applicant's name, address, telephone number, and e-mail address.
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application.
 - (3) Construction and engineering drawings and information confirming that the construction will be consistent with City Code.
- (E) Routine Maintenance and Replacement. A City of Hondo Right-Of-Way Permit Application shall not be required for: (i) routine maintenance; or for (ii) the replacement of a node with another node that is substantially similar.
- (F) Information Updates. Any amendment to information contained in a City of Hondo Right-Of-Way Permit Application shall be submitted in writing to the City within 30 days after the change necessitating the amendment.
- (G) Application Fees. All applications for permits pursuant to this Chapter shall be accompanied by a fee of \$500 for up to five network nodes addressed in the same application, \$250 for each additional node in the same application; and a fee of \$1000 for each node support pole.

Section 13.02.004 – Action on Permit Applications

(A) Review of Applications. The City shall review applications for network nodes, node support poles and transport facilities in light of their conformity with applicable law and City Code and shall issue such City of Hondo Right-Of-Way Permits on nondiscriminatory terms and conditions subject to the following requirements:

- (1) Within 30 days of receiving an application for a network node or node support pole, or 10 days for a transport facility, the City shall determine and notify the Applicant whether the application is complete; or if incomplete, the City must specifically identify the missing information in such notification. There shall be no fee charged for completion and resubmittal of an application.
- (2) The City shall make its final decision to approve or deny a complete application no later than (i) 21 days after receipt of a complete application for a transport facility, (ii) 60 days after receipt of a complete application for a network node; and (iii) 150 days after receipt of a completed application for a new node support pole.
- (3) The City shall advise the Applicant in writing of its final decision, and, if denied, the basis for that denial, including specific provisions of City Code or applicable law on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the application. The Applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 90 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.
- (4) If the City fails to act on an application within the review period specified in this Section 4, the application shall be deemed approved.
- (5) An applicant seeking to collocate network nodes may, at the Applicant's discretion, file a consolidated application and receive permits for up to 30 network nodes. Provided however, the City's denial of any node within a single application shall not affect other nodes submitted in the same application. The City shall grant permits for any and all nodes in a single application that it does not deny, subject to the requirements of this Section.

(B) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the City shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

Section 13.02.005 – Network Nodes in the Public right-of-way; Maximum Height; Other Requirements

(A) Maximum Size of Permitted Use. Collocation of permitted use network nodes in the public right-of-way shall be subject to the size limitations specified in Chapter 284.003 of the Local Government Code.

(B) Historic Areas and Overlay Districts. Subject to the permit application approval time frames in Section 4, a network provider must obtain advance approval from the City before

collocating new network nodes or installing new node support poles in any areas zoned or designated as a historic district or as a design district if the district has decorative poles. Such installations shall be subject to the design and aesthetic standards of such areas.

- (C) 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's discretionary, nondiscriminatory, written consent of the City Manager or designee if the public right-of-way is located in a municipal park or is adjacent to a street or thoroughfare that is 1) not more than 50 feet wide; and 2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions. A network provider shall comply with private deed restrictions and other private restrictions when installing network nodes in parks and residential areas.
- (D) Zoning. A network provider seeking to construct, replace or modify a pole or node in the public right-of-way that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements.

Section 13.02.006 – Effect of Permit

- (A) Authority Granted. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the public right-of-way.
- (B) Time of Installation. A network provider shall begin the installation for which a permit is granted not later than six months after final approval and shall diligently pursue the installation to completion. Provided, however, the City may place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.
- (C) Right to Occupy. Once a network provider has collocated a network node or placed a node support pole pursuant to a permit, the provider shall be permitted to continue to maintain such collocation or such pole unless required to remove or relocate under the terms of this Chapter.
- (D) Interference with network nodes. City will not grant a permit to any Person to install any network node or other wireless facility if the City knows or has reason to know that such Person's use of such network node or other wireless facility may in any way adversely affect or interfere with the use and operation of an existing and operational network node for which the City has previously issued a permit.

Section 13.02.007 – Removal, Relocation or Modification of Network Nodes in the ROW

- (A) Notice. Within 60 days following written notice from the City, a network provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any network node or node support pole within the public right-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the public right-of-way.

- (B) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to disconnect or move any network node located within the public right-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the network provider and allow the network provider an opportunity to move its own facilities prior to the City disconnecting or removing a facility and shall notify the network provider after disconnecting or removing a network node or node support pole.
- (C) Abandonment of Facilities. Upon abandonment of a network node or node support pole within the public right-of-way, the network provider shall notify the City within 90 days. Following receipt of such notice, the City may direct the network provider to remove all or any portion of a network node or node support pole if the City, or any of its departments, determines, subject to City Code, that such removal is necessary to protect public health, safety and welfare.

Section 13.02.008 – Public Right-of-Way Rate

- (A) Annual Rate. Once a network provider has installed a network node in the public right-of-way, network provider shall pay to the City compensation for use of the public right-of-way in the amount of \$250.00 annually per node in the City public right-of-way as authorized by state law. This annual rate is subject to adjustment in accordance with Chapter 284 of the Texas Local Government Code.
- (B) Cease Payment. A network provider is authorized to remove its facilities at any time from the public right-of-way and cease paying the City compensation for use of the public right-of-way following removal and notification to the City of such removal.

Section 13.02.009 – Attachment to Service Poles in the Public Right-of-Way

A network provider shall be permitted to attach network nodes to city-owned service poles, consistent with applicable law, City Code and the General Agreement for Pole Attachment License and subject to the requirements specified herein.

- (A) Permits. A network provider shall obtain a permit, pursuant to the terms of this Chapter, prior to collocating network nodes on service poles by completing a General Agreement for Pole Attachment License.
- (B) Make Ready. Network Provider shall be responsible for all costs for make ready work on City service poles to which provider seeks to place a network node.
- (C) Technical Limitations. In the event the City determines, based upon technical grounds, that inadequate space exists on a service pole to accommodate the proposed network node, such pole may be replaced by the City or its approved contractor, at the network provider's expense, with a service pole with adequate space to accommodate the proposed network node.
- (D) Facilities Rearrangements. If another provider would have to rearrange or adjust any of its facilities to accommodate a new network node, the City shall use reasonable efforts to work with the affected providers to coordinate such activity. All make ready work shall comply with NESC, and other applicable codes. The Applicant shall not be responsible for any third-party costs, including those of other network providers, to adjust existing attachments that are non-compliant with the NESC and other applicable codes at the time of the application.

(E) Service Pole Attachment Fee. The rate to collocate a network node on a service pole in the public right-of-way shall be \$20 per pole per year. Subject to the provisions of Section 10, such compensation together with the application fee and the public right-of-way rate specified in Section 8 shall be the sole compensation that the network provider shall be required to pay to the City.

(F) Cease Payment. A network provider is authorized to remove its facilities at any time from a service pole in the public right-of-way and cease paying the attachment fee to the City upon notification to the City that the facilities have been removed.

Section 13.02.010 – Transport Facilities

Installation of transport facilities, including applicable compensation to the City for such facilities, shall be governed by Chapter 284.055 of the Texas Local Government Code.

Section 13.02.011 - Design Manual

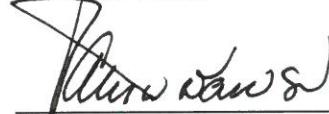
A network provider shall comply with the City's design manual, if any; in place on the date a permit application is filed in relation to work for which the City has approved a permit application. The City's design manual may not conflict with applicable law and must be competitively neutral.

Section 13.02.012 -- Effective Date

This ordinance shall take effect immediately from and after the date of its passage.

PASSED, APPROVED, and ADOPTED on this 13th day of November, 2017.

APPROVED:



James W. Danner, Sr.
Mayor

ATTEST:



Miguel Cantu
City Secretary

