

ORDINANCE NO. 2017-

AN ORDINANCE AMENDING CHAPTER 98 OF THE CODE OF ORDINANCES OF THE CITY OF LEAGUE CITY, ENTITLED “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES” BY ADDING ARTICLE VII, ENTITLED “NETWORK PROVIDERS IN THE PUBLIC RIGHT-OF-WAY” TO ADDRESS THE INSTALLATION OF NETWORK NODES AND RELATED EQUIPMENT IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, Chapter 284 of the Texas Local Government Code will be effective September 1, 2017, and will allow wireless facilities to be installed in public rights-of-way subject to the provisions of that chapter; and

WHEREAS, the ordinances of the City of League City need to be updated to ensure compliance with state law; and

WHEREAS, the City Council desires amend Chapter 98 of the League City Code of Ordinances to add provisions regarding the installation, operation and maintenance of wireless facilities in the City’s public rights-of-way; and

WHEREAS, the City Council declares this ordinance to be necessary to protect the health, safety and welfare of the public; NOW, THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS, as follows:

Section 1. That the Code of Ordinances is hereby amended to ADD a new Article VII of Chapter 98, to be entitled *Network Providers in the Public Right-of-Way*, to read as follows:

ARTICLE VII. NETWORK PROVIDERS IN THE PUBLIC RIGHT OF WAY

Sec. 98-180. Definitions.

(a) As used in this article, the following terms shall have their respective definitions as provided in Chapter 284 of the Texas Local Government Code: *Collocate, Micro Network Node, Network Node, Network Provider, Node Support Pole, Public Right-of-Way, Service Pole, and Transport Facility.*

(b) *Design Manual* shall mean the design manual adopted by Section 98-183 and amended from time to time.

Sec. 98-181. Right of access.

Subject to the provisions of Chapter 284 of the Texas Local Government Code, this article, the Design Manual, and other applicable ordinances, a network provider may use the public rights-of-way to:

- (1) Construct, modify, maintain, operate, relocate and remove a network node or node support pole;
- (2) Modify or replace a utility pole or node support pole; and
- (3) Collocate on a pole.

Sec. 98-182. Insurance requirements.

Any person required under this article to obtain the city's consent to make use of the public right-of-way or any person required by this chapter to obtain a permit to perform construction in the public right-of-way must, during the period of the use or work, obtain and keep in effect insurance against claims for injuries to persons or damages to property arising from or in connection with the performance of the work, comprehensive general liability and property damage insurance with minimum limits of \$1,000,000.00 for each occurrence, for the injury or the death of any person or damage to or destruction of property.

Sec. 98-183. Compliance with design manual.

- (a) The City Council hereby adopts the *City of League City Design Manual for the Installation of Network Nodes and Node Support Poles* pursuant to Texas Local Government Code Chapter 284. A copy of the Design Manual shall be available in the City Secretary's office and on the city's website.
- (b) A network provider must comply with all applicable provisions of the Design Manual as a condition of approval of any application, permit, or other approval required under this code.
- (c) The City Manager or his designee may from time-to time add to, delete from or revise the requirements set forth in the Design Manual without Council action if such revision does not conflict with a provision of state law or another city ordinance.
- (d) In the event of conflict between the Design Manual and the requirements of Article V of Chapter 98, the Design Manual shall control.

Sec. 98-184. Transport facilities.

A network provider that wants to connect a network node to the network using the public right-of-way may:

(1) install its own transport facilities if it obtains a permit under this article and pays the appropriate public right-of-way rates in compliance with state law; or

(2) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month.

Sec. 98-185. Permits.

(a) The network provider must obtain all other permits required by applicable codes and pay the fees established in this code, except in the following situations:

(1) A network provider's routine maintenance of micro network nodes, network nodes, node support poles and related ground equipment that does not require excavation or closing of sidewalk or vehicular lanes in a public right-of-way; or

(2) Replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way, but only if:

a. The replacement or upgrade does not include replacement of an existing node support pole; and

b. The replacement or upgrade does not defeat existing concealment elements of a node support pole.

(b) The network provider may file a consolidated application for the installation or collocation of not more than thirty (30) network nodes and receive a single permit for a permit required by this article or an applicable code. As examples, a network provider may receive one right-of-way work permit for the installation or collocation of not more than thirty (30) network nodes and, if an electrical permit is required, also, a network provider may receive one electrical permit for the installation or collocation of not more than thirty (30) network nodes.

(c) A permit will be issued if its application complies with the provisions of Texas Local Government Code Chapter 284, this article, applicable codes and the Design Manual.

Sec. 98-186. Permit application review.

The review process for a permit application for installation of a transport facility, micro network node, network node, node support pole, and related ground equipment shall conform to the requirements and timelines set forth in state law.

Sec. 98-187. Application fees and rates.

- (a) Application fees for network providers:
 - (1) The application fee for installation of a network provider's own transport facilities or network nodes shall be the lesser of actual, direct, and reasonable costs incurred by the city or \$500 for first 5 nodes and \$250 for each additional node.
 - (2) The application fee for the installation for node support poles shall be the lesser of actual, direct, and reasonable costs incurred by the city or \$1,000 per pole.
- (b) Right-of-way rates for network providers:
 - (1) Public Right-of-Way Rate: The rate to use the public right-of-way shall be \$250 multiplied by the number of network nodes in the public rights-of-way within the city's corporate boundaries. This rate shall be increased by one-half the annual change to the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics as published in February for the preceding twelve months. The increase shall be effective sixty (60) days after the city provides notice of the new rate to each network provider.
 - (2) Public Right-of-Way Rate for Transport Facilities Rate: In addition to the public right-of-way rate set forth in (1), network providers shall pay to the city a monthly public right-of-way rate for transport facilities in the amount equal to \$28 per node per month unless an equal or greater amount is paid under Local Government Code Chapter 283 or Utilities Code Chapter 66.
- (c) Collocation Rate: The rate to collocate a network node on a service pole shall be \$20 per year per service pole.

Sec. 98-188. Penalty for violation; proof of mental state not required.

- (a) Any person, firm, corporation or business entity violating any provision of this Article or the Design Manual shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Article shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.
- (b) It is the intent of the City Council of the City of League City in adopting this ordinance that a violation of this ordinance shall be a strict liability offense; in the

prosecution of an offense under this ordinance, no pleading or proof of a culpable mental state shall be required to establish the guilt of an accused.

Section 2. Savings. All rights and remedies which have accrued in favor of the City under this Ordinance and amendments thereto shall be and are preserved for the benefit of the City.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repealer. All ordinances and parts of ordinances in conflict herewith are hereby repealed but only to the extent of such conflict.

Section 5. Codification. It is the intent of the City Council of the City of League City, Texas, that the provisions of this Ordinance shall be codified in the City's official Code of Ordinances as provided hereinabove.

Section 6. Publication and Effective Date. The City Secretary shall cause this Ordinance, or its caption, to be published in the official newspaper of the City of League City, upon passage of such Ordinance. The Ordinance shall become effective immediately upon its passage.

PASSED first reading the ____ day of _____, 2017.

PASSED second reading the ____ day of _____, 2017.

PASSED AND ADOPTED the ____ day of _____, 2017.

PAT HALLISEY
Mayor

ATTEST:

DIANA M. STAPP
City Secretary

APPROVED AS TO FORM:

NGHIEM V. DOAN
City Attorney