

CITY OF HIGHLAND VILLAGE, TEXAS

ORDINANCE NO. 2018-1258

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, AMENDING THE CITY OF HIGHLAND VILLAGE CODE OF ORDINANCES CHAPTER 14 "PUBLIC WAYS AND PUBLIC PLACES" , ARTICLE 14.07 "RIGHT-OF-WAY MANAGEMENT" BY AMENDING SECTION 14.07.078, "UNDERGROUND SERVICE REQUIREMENTS", SECTION 14.07.203, "FEES", AND SECTION 14.07.205, "COMPLIANCE WITH DESIGN MANUAL"; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS PER VIOLATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Highland Village (the "City") is a Home-Rule Municipality located in Denton County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas; and

WHEREAS, the City has previously adopted Article 14.07, providing Right of Way management rules and regulations; and

WHEREAS, the City Council of the City (the "City Council") has determined that certain sections of Article 14.07 conflict with recently adopted federal rules governing Network Providers; and

WHEREAS, the City Council finds that it is desirable to amend these provisions to read as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, THAT:

SECTION 1. City of Highland Village Code of Ordinances Chapter 14 "Public Ways and Public Places," Article 14.07, "Right of Way Management," is amended as follows:

A. Section 14.07.078, "Underground Service Requirements", is amended to read as follows:

Sec. 14.07.78 Underground service requirements

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, with the exception of antennas for network node equipment, unless otherwise allowed by other law or an existing franchise agreement between the right-of-way user and the City or a PUCT tariff. This does not prohibit replacing existing poles for maintenance purposes. Utilities shall be located underground to the extent required by Section 3.8 of the Highland Village Subdivision Ordinance, as amended.

B. Paragraph (b) of Section 14.07.203 "Fees" is amended to read as follows:

(b) Network Provider Fees

(1) *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 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 collocate 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.

(2) *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.

(3) *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 City on or after the 60th day following that notice.

(4) *Monthly Transport Fee.* To the extent a 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, as adopted and amended by resolution of the City Council, 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 Section 284.053, V.T.C.A. Local Government Code.

(5) *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.

C. Section 14.07.205 "Compliance with Design Manual" is amended to read as follows:

Sec. 14.07.205 Compliance with Design Manual

A network provider shall comply with the City Design Manual for the Installation of Network Nodes and Node Support Poles, as adopted and amended by resolution of the City Council from time to time, the official copy of which shall be maintained in the office of the City Secretary. Any applications submitted for installation of Network Nodes, Node Support Poles and related equipment, the plans and specifications of which do not comply with the Design Manual, will not be approved,

unless a variance has been previously granted to the Network Provider, pursuant to Section 14.07.151 of this Chapter.

SECTION 2. All provisions of the Ordinances of the City of Highland Village, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance 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. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinance as a whole.


SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense as set forth in Section 1.01.009 of the Code of Ordinances.

SECTION 6. This ordinance shall take effect upon its passage on Second Reading and publication of the caption in accordance with the provisions of the Charter of the City of Highland Village, and it is accordingly so ordained.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON FIRST READING ON THIS THE 13TH DAY OF NOVEMBER 2018.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON SECOND READING ON THIS THE 11TH DAY OF DECEMBER 2018.

APPROVED:


Charlotte J. Wilcox, Mayor

ATTEST:


Angela Miller, TRMC, City Secretary



APPROVED AS TO FORM AND LEGALITY:


Kevin B. Laughlin, City Attorney
(kbl:11/6/18:104040)