

AN ORDINANCE AMENDING CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; AMENDING VARIOUS SECTIONS OF CHAPTER 25 TO REGULATE USE OF THE PUBLIC RIGHT-OF-WAY; ADDING SECTIONS OF CHAPTER 25 TO ADDRESS TELECOMMUNICATIONS AND NETWORK NODES IN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the City Council finds that revisions to Chapter 25 are necessary to protect the public health, safety and welfare within the public right-of-way; and,

WHEREAS, the Texas Legislature passed Senate Bill 1004 which will become effective September 1, 2017, which provides access to the city’s right-of-way for network providers to install network nodes and poles without a franchise agreement but subject to a right-of-way management ordinance and regulates applications and fees associated with the same; and,

WHEREAS, the City Council finds that establishing regulations within the public right-of-way is in the best interest of the City and its current and future Citizens and is further permitted in accordance with the Texas Local Government Code, Chapter 283 and Chapter 284 et seq.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS:

SECTION I. That Chapter 25 of the City of Killeen Code of Ordinances is hereby amended to read as follows:

ARTICLE II. – PUBLIC RIGHT-OF-WAY MANAGEMENT: EXCAVATION, CONDUITS, ETC.

DIVISION 1. - GENERALLY

Sec. 25-11. – Purpose.

The purpose of this Article is to provide for safe and appropriate use of the public right-of-way by regulating placement and maintenance of facilities and equipment within the public right-of-way.

Sec. 25-12. – Definitions.

“Certificated telecommunications provider” 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 Public Utility Commission of Texas to offer local exchange telephone service or a person who provides voice service.

“Collocate” and “collocation” mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

“Decorative pole” means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

“Emergency” means an unexpected event that could not have reasonably been anticipated requiring immediate action to protect the health, safety, or welfare of the public.

“Local exchange telephone service” has the meaning assigned by Section 51.002 of the Texas Utilities Code.

“Network node” means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

"Network provider" means:

(A) a wireless service provider; or

(B) 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:

(i) network nodes; or

(ii) node support poles or any other structure that supports or is capable of supporting a network node.

"Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

"Public 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 municipality 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.

"Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

"Public utility, utility or user" includes but is not limited to any electric utility, gas utility, telecommunications utility, cable company, water utility, or sewer utility, but does not include a network provider.

"Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality 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 a municipality and supporting only network nodes.

"Telecommunications utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

"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 service to the public.

"Voice service" means voice communications services through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 USC Section 332(d).

Sec. 25-13. - Penalty.

Unless stated otherwise, violations of this article shall be punished as provided in section 1-8.

Secs. 25-14 – 25-31. Reserved.

Sec. 25-32. - Supervision of work.

Work coming under this article must be performed strictly in accordance with the requirements of the Public Works and Planning and Development Services Departments and not otherwise; and shall be performed in such manner and at such times and within such time as the Building Official or his designee shall prescribe and approve. The excavations and the depth, grade and location of any pipes, mains, laterals, sewer or wiring shall be as prescribed by an approved permit in each case.

(Code 1963, Ch. 11, art. 2, § 4 [Ord. No. 81-24, § 1, 6-23-81])

Sec. 25-33. - Barricades.

The permittee under this article shall erect barricades around the area being excavated in accordance with the requirements of the Manual of Uniform Traffic-Control Devices.

(Code 1963, Ch. 11, art. 2, § 4 [Ord. No. 81-24, § 1, 6-23-81])

Sec. 25-34. - Compliance.

- (a) All excavations made within the public right-of-way of any street or alley or across any square or public grounds within the city shall be made in accordance with the provisions of this article.
- (b) All excavations, backfills and repair in streets and alleys shall be in accordance with applicable City of Killeen standard details.
- (c) The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee, upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) days of the receipt of the notice from the City, not including days which work cannot be done because of circumstances constituting force majeure. If permittee fails to restore the public right-of-way in the manner and to the condition required by the City, the City at its option may do the work and bill the Permittee for the cost of restoring the public right-of-way.

(Code 1963, Ch. 11, art. 2, § 4 [Ord. No. 81-24, § 1, 6-23-81])

Sec. 25-35. - Backfilling.

Backfilling shall be completed pursuant to applicable City of Killeen standard details and the INFRASTRUCTURE DESIGN AND DEVELOPMENT STANDARDS MANUAL (IDDSM).

(Code 1963, Ch. 11, art. 2, § 4 [Ord. No. 81-24, § 1, 6-23-81])

Sec. 25-36. - Resurfacing.

Resurfacing shall be completed pursuant to applicable City of Killeen standard details and the INFRASTRUCTURE DESIGN AND DEVELOPMENT STANDARDS MANUAL (IDDSM).

(Code 1963, Ch. 11, art. 2, § 4 [Ord. No. 81-24, § 1, 6-23-81])

Sec. 25-37. - Work at expense of applicant.

All such work shall be performed at the sole expense of the person making such application, and without expense to the city. If the work is not completed within the time limit set by the Building Official or his designee, the city may have the work done by an independent contractor. All such work shall be chargeable to the permittee and no permit for such cuts shall be issued until such time as the city is reimbursed such expense by the permittee.

Sec. 25-38. – Interference with Public right-of-way.

A permittee shall not so obstruct a public right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the public right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Sec. 25-39. – Poles, towers, and other structures.

Poles, towers, and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways. Poles, towers, and other structures shall comply with FAA clearance requirements. Any attachment to a pole, tower, or other structure overhanging a street, alley, or highway must have a minimum clearance height of fourteen (14) feet from top of the pavement unless approved in writing by the Director of Public Works.

Sec. 25-40. – Construction and Removal of Facilities.

(A) This City may lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under public right-of-way occupied by a Permittee. The City may also change in any manner any curb, sidewalk, highway, alley, public way, street, utility line, storm sewer, drainage basin, drainage ditch, and the like.

(B) A Permittee shall remove or relocate its facilities in the public right-of-way when it is determined by the director of the Public Works Department that removal, relocation, change, or alteration of the facilities in the public right-of-way is reasonably necessary for the construction, operation, repair, maintenance, or installation of a City or other governmental entity's public improvements.

(C) A Permittee shall remove, relocate, change, or alter the position of its facilities that are in the public right-of-way no later than the 120th day after receiving written notice from the director of the Public Works Department. All relocation expenses shall be paid by the permittee except as otherwise required by law.

(C) This section does not prevent a permittee from recovering the cost of relocating or removing facilities in the public right-of-way from a non-governmental third party that initiates a request for relocation or removal, or from a governmental entity that has authorized payment for relocation or removal costs.

Secs. 25-41—25-50. - Reserved.

DIVISION 2. - PERMIT

Sec. 25-51. – Public Right-of-Way Permit Required.

No person shall dig any holes or trenches over 18 inches deep upon, through, or beneath any public right-of-way, lay any pipes, mains, laterals, or any connecting or service pipes, nor any underground sewer or underground wiring along, across or beneath any public right-of-way, or install any new equipment or facility within the public right-of-way, without first having filed with the Building Official or designee an application and documents as required by Sec. 25-54 to do so and without having first obtained a formal written approval of such application and map and a permit to perform such work.

(Code 1963, Ch. 11, art. 2, § 1(a) [Ord. No. 71-17, § 1, 4-26-71])

Sec. 25-52. – Public Utility poles.

A permit from the Building Official or his designee shall be required of all public utility companies to set utility poles in any street or alley, and each public utility company shall make a report in writing to the Building Official or his designee by the 1st day of each calendar year, giving the location of each public utility pole which it has set in the public right-of-way of any and all streets and alleys in the city during the preceding calendar year.

(Code 1963, Ch. 11, art. 2, § 1(b) [Ord. No. 71-17, § 1, 4-26-71])

Sec. 25-53. - Emergency work.

In cases of emergency that may arise on holidays or outside of prescribed working hours of city hall offices, utility companies may cut or puncture the public right-of-way of streets and alleys without first getting a permit to do such work, provided that where such cuttings or punctures are made by any such utility company in the public right-of-way of a street or alley, such company shall apply for and obtain a permit for such work on the first working day after the work is done.

(Code 1963, Ch. 11, art. 2, § 1(c) [Ord. No. 71-17, § 1, 4-26-71])

Sec. 25-54. - Application.

Application for a permit required by this division shall be submitted in such form as the Building Official or his designee may prescribe from time to time, and, insofar as applicable, shall follow generally the requirements prescribed by the city for applications for building permits, in addition to any other information prescribed by the Building Official or his designee. . The application shall include, but not be limited to:

- (1) Permittee's name, address, and email if applicable, and telephone number
- (2) A certificate of insurance (The city may require a copy of the actual insurance policies):
 - (i) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Texas, or a form of self insurance acceptable to the city;
 - (ii) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the public right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the public right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - (iii) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (iv) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - (v) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- (3) map or plan of such proposed work, including any construction any engineering drawings necessary to confirm compliance with any applicable statutory and/or city design requirements
- (4) Payment of applicable permit fees and applicable public right-of-way rate fees.
- (5) A copy of the person's order granting a certificate of authority from the Public Utilities Commission or other applicable state or federal agency where the person is lawfully required to have such certificate from said commission or other state or federal agency.

(Code 1963, Ch. 11, art. 2, § 2)

Sec. 25-55. - Bond.

No permit to puncture, open, dig, or excavate with the public right-of-way shall be issued under this division to any person until such person shall have filed a bond in the sum of two thousand dollars (\$2,000.00) with a good and sufficient surety with the city secretary. Such bond shall be effective as to any permit for a period of one (1) year after such permit is issued and shall cover all permits issued to the principal of such bond as long as such bond is on file. The form of the bond shall be as follows:

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BELL

That we, _____ as principal and _____ as surety, are held and firmly bound unto the City of Killeen, Texas in the penal sum of \$2,000.00 to the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors and assigns by these presents:

The condition of the above obligation is such that, whereas the above principal has obtained a permit and/or permits to puncture, open, dig or excavate within the public right-of-way within the City of Killeen, Texas, in accordance with an application and/or applications heretofore filed by him with said City of Killeen:

Now, if the above bound principal, his heirs, executors, administrators, successors, and/or assigns, shall well and truly keep, do and perform all laws and ordinances of the City of Killeen, regulating excavations or punctures within the public right-of-way of the City of Killeen and will refill said excavations or punctures according to the ordinances and specifications prescribed by the City of Killeen, and will replace all pavement as required by said specifications and will hold the City of Killeen harmless from all damages that may occur by reason of said punctures, holes or excavations made by said principal, for a period of one year from the date each said permit is issued, then this obligation shall be null and void; otherwise, to be and remain in full force and effect. Successive recoveries may be made on this bond and one or more recoveries thereon shall not exhaust or terminate this bond.

Witness the execution hereof, on this the _____ day of _____, _____.

Surety Principal

Approved this the _____ day of _____, _____.

/s/

City Secretary

Sec. 25-56. – Permit Fees.

(A) Network Node permit fee: \$500 per application covering up to five network nodes; \$250 for each additional network node per application up to 30 network nodes

(B) Excavation over 18” deep/setting pole: \$1000 per application/pole (including a node support pole, but not including a telecommunications utility pole)

(C) If applicant is covered by a current franchise agreement, fees are paid pursuant to the franchise agreement and exempt from fees in this section.

(D) A network provider shall not be required to submit an application, obtain a permit, or pay a rate for routine maintenance or replacement of substantially similar existing equipment.

DIVISION 3. – USE OF PUBLIC RIGHT-OF-WAY BY TELECOMMUNICATIONS PROVIDERS.

Sec. 25-57. –AUTHORITY; SCOPE.

(A) This division shall be read in accordance with Article XI (*Franchises and Public Utilities*) of the City Charter and Chapter 283 (*Management of Public Right-of-Way Used by Telecommunications Providers in Municipality*) of the Texas Local Government Code.

(B) This division does not give a telecommunications provider the right to use utility infrastructure or to excavate in the public right-of-way. All excavation in the public right-of-way must be done in accordance with Chapter 25, Article II, Division 2, of the Code.

(C) This chapter does not apply to a private line telecommunication network.

Sec. 25-58. - CONSTRUCTION AND REMOVAL OF FACILITIES.

(A) A certificated telecommunications provider is subject to the construction rules and standards set forth in Chapter 25, Article II, Division 2, of the Code.

(B) A certificated telecommunications provider shall remove or relocate its facilities in the public right-of-way when it is determined by the director of the Public Works Department that removal, relocation, change, or alteration of the facilities in the public right-of-way is reasonably necessary for the construction, operation, repair, maintenance, or installation of a City or other governmental entity's public improvements.

(C) A certificated telecommunications provider shall remove, relocate, change, or alter the position of its facilities that are in the public right-of-way no later than the 120th day after receiving written notice from the director of the Public Works Department. All relocation expenses shall be paid by the telecommunications provider.

(D) This section does not prevent a certificated telecommunications provider from recovering the cost of relocating or removing facilities in the public right-of-way from a non-governmental third party that initiates a request for relocation or removal, or from a governmental entity that has authorized payment for relocation or removal costs.

Sec. 25-59. - COMPENSATION TO THE CITY.

A certificated telecommunications provider shall pay a public right-of-way use fee as prescribed by Chapter 283 (*Management of Public Right-of-Way Used by Telecommunications Providers in Municipality*) of the Texas Local Government Code.

Sec. 25-60. - INDEMNITY.

A certificated telecommunications provider is liable for the acts and omissions of any entity involved in the construction or installation of facilities used by the provider. Acts and omissions of the entity shall be considered the acts and omissions of the provider.

The City shall submit prompt, written notice to a provider of any claim for which the City is seeking indemnification.

Sec. 25-61. Reserved.

DIVISION 4. – USE OF PUBLIC RIGHT-OF-WAY FOR DEPLOYMENT OF NETWORK NODES.

25-62. – General.

(A) A network provider is subject to the construction rules and standards set forth in Chapter 25, Article II, Division 2, of the Code.

(B) A network provider shall remove or relocate its facilities in the public right-of-way when it is determined by the director of the Public Works Department that removal, relocation, change, or alteration of the facilities in the public right-of-way is reasonably necessary for the construction, operation, repair, maintenance, or installation of a City or other governmental entity's public improvements.

(C) A network provider shall remove, relocate, change, or alter the position of its facilities that are in the public right-of-way no later than the 120th day after receiving written notice from the director of the Public Works Department. All relocation expenses shall be paid by the telecommunications provider.

(D) This section does not prevent a network provider from recovering the cost of relocating or removing facilities in the public right-of-way from a non-governmental third party that initiates a request for relocation or removal, or from a governmental entity that has authorized payment for relocation or removal costs.

Sec. 25-63. - COMPENSATION TO THE CITY.

(A) A network provider shall pay fees as authorized by Chapter 284 (*Deployment of Network Nodes in Public Right-of-Way*) of the Texas Local Government Code as amended in the following amounts:

(1) Public Right-of-Way Rate: \$250 per network node located in the public right-of-way to be paid at the time of application and annually thereafter by the first day of the calendar year

(2) Transport Facility Public Right-of-Way Rate: \$28/month per network node located in the public right-of-way for which the installed transport facilities provide backhaul unless network provider has obtained 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/month per network node

(B) A network provider shall be required to execute a standard Service Pole Attachment Agreement to be able authorized to collocate network nodes on service poles at a rate not greater than \$20 per year per service pole.

Sec. 25-64. - INDEMNITY.

A network provider is liable for the acts and omissions of any entity involved in the construction or installation of facilities used by the provider. Acts and omissions of the entity shall be considered the acts and omissions of the provider.

The City shall submit prompt, written notice to a provider of any claim for which the City is seeking indemnification.

Sec. 25-65. – COLLOCATION OF NETWORK NODES AND NEW NODE SUPPORT POLES WITHIN HISTORIC DISTRICT OR DESIGN DISTRICT.

A network provider shall obtain advance approval from the City before collocating new network nodes or installing new node support poles in an area zoned or otherwise designated as a historic district or as a design district if the district already has decorative poles. Certain types of equipment shall be required as prescribed by the Director of Public Works.

Sec. 25-66. – DESIGN REQUIREMENTS.

A network provider shall comply with requirements included in the design manual for the installation and construction of network nodes and new node support poles in the public right-of-way.

For each permit application relating to a network node, an industry standard pole load analysis shall be completed and submitted to the City with the application indicating that the service pole to which the network node is to be attached will safely support the load.

All network node equipment placed on new and existing poles shall be placed more than eight feet above ground level.

Secs. 25-67 – 25-75. Reserved.

SECTION II. That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION III. That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or

impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION IV. That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION V. That this ordinance shall be effective September 1, 2017.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this _____ day of _____, 2017, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED

Jose L. Segarra, MAYOR

ATTEST:

APPROVED AS TO FORM:

Dianna Barker, CITY SECRETARY

Kathryn H. Davis, CITY ATTORNEY