

**ORDINANCE NO. 2023-379**

**AN ORDINANCE AMENDING SECTION 23-4 “DEFINITIONS” OF ARTICLE I “GENERAL PROVISIONS” OF CHAPTER 23 “RIGHT-OF-WAY MANAGEMENT” OF THE CODE OF ORDINANCES OF THE CITY OF WACO, TEXAS TO CHANGE THE DEFINITION OF CITY ENGINEER; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WACO, TEXAS:**

**Section 1.** That Section 23-4 “Definitions” of Article I “General Provisions” of Chapter 23 “Right-of-Way Management” of the Code of Ordinances of the City of Waco, Texas is hereby amended to read as follows (additions, ~~deletions~~):

**Sec. 23-4. Definitions.**

*Abandon* and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by user in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to user, user has established to the reasonable satisfaction of the city that the applicable facilities, or portion thereof, is still in active use.

*Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless service.

*Backfill* means material removed from an area whereby some or all of said material needs to be replaced in a manner consistent with the area's condition prior to removal.

*Chapter* means the right-of-way management ordinance, chapter 23 of this Code of the city and any applicable or specific sections of such ordinance.

*City* means the City of Waco, Texas, and its departments, officials, agents, and employees.

*City-business day* means a workday upon which the city ordinarily and customarily conducts business.

City engineer as used throughout this Code of Ordinances means the Director of Public Works or his/her designee. ~~individual functioning as the city engineer or the director of engineering services of the city and includes any employee, agent, or representative designated to represent the city engineer, unless otherwise indicated.~~

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

*Construction* means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, of facilities above, upon, or within the right-of-way. The definition does not include providing primary service, restoration, or maintenance of existing facilities unless providing primary service, restoration, or maintenance requires excavation, boring, or the breaking of pavement of a length of more than two feet within the right-of-way or requires the closing of sidewalks or vehicular lanes in the right of way.

*Control joint* means a line scored on the surface of concrete to control cracking.

*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.

*Design district* means and includes any of the following:

- (1) The Downtown Overlay District;
- (2) Brazos River Corridor Overlay District;
- (3) College and University Neighborhoods Overlay District;
- (4) Neighborhood Conservation District; and
- (5) Any other area that is zoned in such a way that there are unique design and aesthetic standards for the area.

*Design manual* means the Design Manual for the Installation of Network Nodes and Node Support Poles pursuant to Tex. Loc. Gov. Code, Chapter 284 which is adopted by the city council and which may be amended by the city engineer.

*Emergency* means those circumstances, including service interruption as that term is defined by this chapter, where the health, safety, or general welfare of the public is at risk or will be at risk, and such circumstances necessitate response work or repair from a user of the right-of-way.

*Facilities* means structures, infrastructure, or other appurtenances above, upon, or within the right-of-way and includes, but is not limited to, lines and appurtenances, water lines, sewer lines, streets, curb, gutters, traffic control devices and appurtenances, network nodes, poles, transport facilities and other infrastructure, whether owned, operated, maintained, or leased by the city or a third party.

*General permit* means a permit issued in lieu of individual permits for the purpose of

allowing routine or repetitious construction, including construction for service drops and service build-outs.

*Gravity-dependent facilities* means any facility which must maintain a slope in order to function properly.

*Historic district* means and includes any of the following:

- (1) Waco Downtown Historic District;
- (2) Castle Heights Historic District;
- (3) Texas Textile Mills - L.L. Sams Company Historic District;
- (4) Veterans Administration Hospital Historic District; and
- (5) Any other area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

*Law* means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

*Macro tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by V.T.C.A., Texas Local Government Code, § 284.103 and that supports or is capable of supporting antennas.

*Micro network node* means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

*Municipally owned utility pole* means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a right-of-way.

*Municipal park* means those parks as designated and defined in section 17-1 of this Code. *Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

- (1) Includes:
  - a. Equipment associated with wireless communications;
  - b. A radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
  - c. Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (2) Does not include:
  - a. An electric generator;
  - b. A pole; or
  - c. A macro tower.

*Network provider* means:

- (1) A wireless service provider; or
- (2) 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:

- a. Network nodes; or
- b. 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.

*Permittee* means the person requesting a construction permit or other permits from the city in order to perform construction in the right-of-way, and such term includes any agent, employee, or other representative designated by the person requesting a construction or other such permit.

*Person* means an individual, corporation, partnership, or other legal entity authorized to do business in the State of Texas, or a person's representatives, employees, or designated agents, and also includes a user as that term is defined and used in this chapter.

*Pole* means a service pole, municipally owned utility pole, node support pole, or utility pole.

*Primary service* means service provided to an end-use customer by a utility provider or user if the delivery of such service uses the right-of-way and is limited to activity to connect an end-use customer to a primary utility supply already existing adjacent to the end-use customer's site or premises.

*Private easement* means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

*Restoration* means putting property affected by right-of-way construction into a condition that is equal to or better than the condition of the property prior to the construction, and such term shall include repair, removal, replacement, or renovation of right-of-way property.

*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 city has an interest. The term does not include:

- (1) A private easement; or
- (2) The airwaves above a right-of-way with regard to wireless telecommunications.

*Service interruption* means unavailability of utility service due to malfunction in or damage to the utility infrastructure.

*Service pole* means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a right-of-way, including:

- (1) A pole that supports traffic control functions;
- (2) A structure for signage;
- (3) A pole that supports lighting, other than a decorative pole; and
- (4) A pole or similar structure owned or operated by a municipality and supporting only network nodes.

*Transport facility* means each transmission path physically within a 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.

*User* means a person who commences, facilitates, or performs construction upon a facility above, upon, or beneath the right-of-way in a manner governed by this chapter and includes user's representatives, designated agents, contractors and subcontractors, if applicable, unless otherwise indicated.

*Utility pole* means a pole that provides:

- (1) Electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (2) Services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

*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.

In the application of these definitions and other terms and conditions of this chapter, words in the plural also mean and include the singular and words in the singular also mean and include the plural unless otherwise indicated by this chapter.

**Section 2.** That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**Section 3.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 4.** That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

**Section 5.** That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

**Section 6.** That this ordinance shall take effect upon its passage as provided by the City Charter of the City of Waco.

**Section 7.** That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

**PASSED AND APPROVED:**

**First Reading:** this 2nd day of May 2023.

**Second Reading:** this 16<sup>th</sup> day of May 2023.

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Dillon Meek, Mayor  
City of Waco, Texas

**ATTEST:**

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Michelle Hicks, City Secretary

**APPROVED AS TO FORM & LEGALITY:**

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Jennifer Richie, City Attorney