

ORDINANCE O-14-17

AN ORDINANCE CREATING ARTICLE VI, RIGHT-OF-WAY MANAGEMENT, DIVISION 1 - GENERALLY AND DIVISION 2 - NETWORK NODES AND NODE SUPPORT POLES TO CHAPTER 50 OF THE CODE OF ORDINANCES OF THE CITY OF MCGREGOR, TEXAS; PROVIDING FOR RIGHT-OF-WAY MANAGEMENT; RELATING TO THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF STREET RIGHTS-OF-WAY; PROVIDING DEFINITIONS; PROHIBITING THE COMMENCEMENT OR CONTINUANCE OF CONSTRUCTION OF CERTAIN FACILITIES ABOVE, UPON, OR BENEATH CITY RIGHTS-OF-WAY EXCEPT AS PROVIDED IN ARTICLE VI, DIVISION 1, CHAPTER 50; REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; REQUIRING FINANCIAL RESPONSIBILITY FOR CERTAIN PERSONS; REQUIRING CONSTRUCTION PERMITS FOR CERTAIN WORK; PROVIDING FOR CONSTRUCTION STANDARDS; PROHIBITING THE DISTURBANCE OF CITY OR OTHER FACILITIES; REGULATING THE LOCATION AND PLACEMENT OF CERTAIN FACILITIES; REQUIRING CONFORMANCE WITH PUBLIC IMPROVEMENTS; REQUIRING CERTAIN EROSION CONTROL; REQUIRING CERTAIN TRAFFIC CONTROL; PROVIDING CERTAIN REGULATIONS REGARDING BACKFILL; REQUIRING CERTAIN RIGHT-OF-WAY INSPECTIONS; PROHIBITING SUBSTANDARD CONSTRUCTION; PROVIDING FOR LIABILITY FOR CERTAIN PROPERTY DAMAGE OR CONSTRUCTION; REQUIRING RESTORATION OF CERTAIN PROPERTY; REQUIRING NOTICE TO CERTAIN ADJOINING PROPERTY OWNERS; 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 APPLICATION FOR CERTAIN PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF CERTAIN PERMIT APPLICATIONS; PROVIDING CERTAIN APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON THE PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORICAL DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; FINDING COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY the City Council of the City of McGregor, Texas as follows:

Section 1. Chapter 50 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of McGregor is hereby amended to include a new Article VI, Right-of-Way Management, Division 1 - Generally, and Division 2 – Network Nodes and Node Support Poles, as follows:

ARTICLE VI.

Division 1 – Generally

Sec. 50-350 – Applicability.

Division 1 of Article VI is not applicable to (1) network nodes or node support poles, as those terms are defined in Section 50-372 of this Code of Ordinances, or (2) activity described in Section 284.051 of the Texas Local Government Code. Division 2 of Article VI of this Chapter (Sec. 50-370, et seq.) is applicable to network nodes, node support poles and those activities described in Section 284.051 of the Texas Local Government Code.

Sec. 50-351 – Definitions.

As used in Article VI, Division 1 - Generally of Chapter 50 of the Code of Ordinances of the City of McGregor, the term “right-of-way” or “City right-of-way” shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by the City of McGregor or any other governmental entity.

Sec. 50-352 – Right-of-way construction.

Subject to the provisions of Sec. 50-350, no person shall commence or continue with the construction of facilities above, upon, or beneath right-of-way in the City except as provided by this Division and pursuant to the directives of the City Manager, or his designee, issued pursuant to this Division.

Sec. 50-353 - Financial responsibility.

- (a) Except as otherwise provided in this section, a user shall provide proof of insurance as directed by the City, and as a condition of the granting of a permit, in the following types and amounts:
 - (1) Workers' compensation insurance covering all employees of permittee engaged in any operation covered by the permit;
 - (2) Vehicle insurance:

\$300,000.00 for personal injuries to any one person, and

\$500,000.00 for personal injuries arising out of any one accident, casualty, or event;

(3) General liability:

\$500,000.00 for personal injury and
\$100,000.00 for property damage;

(4) Umbrella coverage:

\$1,000,000.00.

- (b) Insurance coverage provided and required under this Division shall be payable on a per occurrence basis and shall include acceptable coverage for personal injury, contractual liability, premises liability, medical damages, underground explosion, and collapse hazards.
- (c) Each policy shall include a cancellation provision in which the insurance company shall be required to notify the City, in writing, not less than 30 days before the insurance company cancels, fails to renew, or reduces any policy limits.
- (d) A user shall file with the City the required original certificate of insurance prior to any construction in the right-of-way. The certificate shall state the policy number, name of the insurance company and underwriter, name and address of the agent or authorized representative of the insurance company, name, address, and telephone number of the insured, policy effective and expiration dates, and specific coverage amounts.
- (e) In addition to the insurance requirements of this Division, a user shall present to the City a surety bond, obtained from a surety company authorized to do business in the state, in the estimated amount of the value of the construction to be performed during the course of 12 months, and such bond shall be in effect and valid prior to the commencement of any construction, and such bond shall remain in effect and valid for 12 months after the completion of the construction in order to guarantee the restoration of the right-of-way in the event the user or the user's contractors or subcontractors leave the right-of-way unfinished, incomplete, or unsafe.
- (f) If a user is or has been a party to a contract or to a franchise or license agreement with the City, and under such contract or agreement, insurance and a bond or bonds are required to be kept in force, and are in force when the user performs construction under this Division, then such insurance

and bond or bonds shall be accepted by the City in lieu of the user complying with the requirements of this section. A user will be responsible for showing proof that such insurance and bond or bonds are in force before the user commences to perform construction under this Division.

- (g) The requirements of this section may be waived for a user who provides to the City the user's most recent audited financial statement, or similar verifiable documentation, showing assets or reserves in excess of \$5,000,000.00.

Sec. 50-354 - Construction permits.

- (a) No person shall perform any construction of facilities in the right-of-way without first obtaining a construction permit, except as otherwise provided by this Division. The permit shall be in the name of the person who owns or will subsequently own the facilities to be constructed. The permit application shall be completed and signed by the person as permittee.
- (b) A permit under this section shall not be required when providing primary service as defined by this Division unless providing such primary service requires construction of a length of more than two feet within the right of way.
- (c) Construction considered an emergency, as that term is defined by this Division, relating to existing facilities may be undertaken without first obtaining a permit from the City. However, a user shall notify the City Manager's office as promptly as possible after beginning the emergency construction, but in any event in writing no later than the next City-business day, of any emergency construction, and shall also provide within two business days a reasonably detailed description of the construction performed in the right-of-way, and shall further provide within 90 days from the date any facilities are reconstructed or relocated and an updated map of any facilities that were affected by such emergency construction, but if the facilities are merely repaired in place, no updated map shall be required. In the event of inclement weather or natural disaster, only one general notification will be required.
- (d) A general permit as defined herein may be issued by the City Manager, or his designee, but a permittee shall otherwise comply with subsection (e) of this section in the issuance of a general permit.
- (e) A permittee shall provide the City Manager, or his designee, the following information prior to the permit being issued, and such information shall be incorporated by reference into the permit:

- (1) To whom the permit is issued;
- (2) A description of the location of construction and facilities;
- (3) A description of the route of all facilities to be constructed on or about the designated right-of-way;
- (4) Location of all right-of-way easements which the permittee plans to use;
- (5) Location of existing City and third-party facilities as required by section 50-358;
- (6) Description of plans, which may be submitted as a form statement, to restore existing facilities pursuant to this Division, and other right-of-way construction;
- (7) Drawings of any bores, trenches, hand holes, manholes, switch gear, transformers, pedestals, poles, and the such-like, including any applicable depths and heights;
- (8) Typical of manholes and hand holes that the permittee plans to use or access;
- (9) The construction methods and materials to be employed by the permittee for the protection of existing facilities within, above, beneath, or adjacent to the right-of-way, all of which methods and materials are subject to approval by the City Manager, or his designee;
- (10) Estimated dates and times that construction is scheduled to be performed;
- (11) The base material to be used pursuant to section 50-356 of this Division;
- (12) Restoration of property pursuant to section 50-367 of this Division;
- (13) Three sets of construction plans which shall be on a scale not to exceed one inch equaling 100 feet unless otherwise approved by the City Manager, or his designee, and the plans shall include the dimensions from the proposed facility to permanent reference points;

- (14) Detailed description of what the permittee proposes to construct, including but not limited to, if applicable, pipe sizes, the number of interducts, and valves;
 - (15) A complete legend of drawings submitted by the permittee, which may be provided by reference to previously submitted documents, but if symbols are used, the permittee shall provide the City with an accurate guide to the meaning of any symbols used;
 - (16) A written statement that proof of insurance, bond, or other financial information required under this Division is current and on file with the City; and,
 - (17) A traffic control plan acceptable to the City Manager, or his designee.
- (f) All construction in the right-of-way shall be in accordance with the construction permit for the facilities. The City Manager, or his designee, shall be provided access to the right-of-way construction and to such further information as the City Manager, or his designee, may reasonably require in order to ensure compliance with the permit or this Division.
- (g) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the City Manager, or his designee, at all times when construction is occurring.
- (h) All construction authorized by permit shall be completed in the time specified in the construction permit. If the construction cannot be completed in the specified time period, a user may request an extension of time from the City Manager, or his designee, who shall not unreasonably deny such extension. A user may continue work that has been approved by the permit during the time the request for an extension is pending, so long as the request is made prior to the expiration of the permit.
- (i) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the City shall be provided by the user to the City Manager, or his designee, upon request.
- (j) A request for a construction permit shall be submitted at least 15 City-business days before the commencement of the proposed construction unless:
- (1) The construction is for primary service and state law or federal law requires construction time be less than 15 City-business days; or

- (2) The City Manager, or his designee, agrees to a request by the user for a modified submission date.
- (k) Requests for construction permits shall be promptly processed and approved or disapproved by the City Manager, or his designee, but in any event no later than ten City-business days after receiving all the permit information required under this Division, except that, if subsection 50-354(j)(1) shall apply, a construction permit shall be processed as soon as reasonably practical.
- (l) The City Manager, or his designee, may request a pre-construction meeting with the permittee or the user.

Sec. 50-355 - Construction standards.

- (a) A user shall notify the City Manager, or his designee, not less than 24 hours in advance that construction is ready to proceed and provide the name, address, and phone number of the contractor or subcontractor(s) who will perform the actual construction, including the name and telephone number of an individual designated by the contractor or subcontractor(s) who will be available for contact by the City at all times during construction.
- (b) Construction shall be in compliance with all applicable City codes, local, state and federal laws.
- (c) Hours for right-of-way construction and any related work, except for an emergency as defined under this Division, for longer than from 7:00 a.m. until 7:00 p.m., seven days a week, must be approved by the City Manager, or his designee, upon submission by a user prior to commencement of construction.
- (d) A user shall place at the location where construction is to occur, at least 24 hours prior to the beginning of construction, information signs measuring three feet by three feet, stating the identity and telephone number of the person doing the construction in the right-of-way, and the identity and telephone number of the user, and said information signs shall remain posted at the location during the entire time the construction is occurring. If the construction is due to an emergency as defined elsewhere in this Division, the 24-hour advanced placement is not required.
- (e) The size and nature of facilities, to be in the right-of-way, including their location, depth, height, upgrades, and other particulars, shall be subject to the approval of the City Manager, or his designee, unless such approval conflicts with state or federal law.

Sec. 30-356 - Base material.

Base material shall be constructed as designated on the construction permit and as required by the City of McGregor Engineer. A user shall notify the City Manager, or his designee and the City Engineer, not less than two hours prior to the placement of base material. Failure to do so may result in the suspension of construction and the removal of any base material placed without prior approval.

Sec. 30-357 - Facilities—Disturbance.

- (a) A user's facilities shall not be allowed to disturb City facilities, in particular gravity-dependent facilities.
- (b) The City Manager, or his designee, may direct a user to keep a reasonable distance from facilities which are City-owned or leased. Facilities constructed shall be presumed to disturb facilities which are City-owned or leased if the existing facility, or the facility to be constructed, is within three feet horizontally of such City-owned or leased facility. Nothing in this section shall diminish the authority of the City Manager, or his designee, to require specific placement of particular facilities.

Sec. 30-358 - Same—Location and placement.

- (a) Prior to commencing excavation or boring, unless otherwise excepted by this Division, a user shall verify the horizontal and vertical location of existing City and third-party facilities within three feet of the user's proposed construction. Prior to commencing excavation or boring, unless otherwise excepted by this Division, a user shall verify only the horizontal location for facilities outside three feet of the user's proposed construction and which may be reasonably anticipated to be disturbed by the user's proposed construction.
- (b) Any facility constructed by a user shall maintain a minimum of six inches vertical separation when crossing any existing facility.
- (c) Facilities constructed by the user shall be constructed at a minimum depth of 24 inches, except the City Manager, or his designee, may require a lesser or greater depth if it is deemed necessary for the health, safety, or general welfare of the public.
- (d) All bores shall be a minimum of 24 inches below the street gutter or edge of pavement.
- (e) All directional boring shall have a locator place bore marks and depths while the bore is in operation. Locator shall place a mark at each stem with a paint dot and shall mark the depth at least at every other stem.

- (f) Placement of all appurtenances shall be approved by the City Manager, or his designee, prior to placement.
- (g) All utilities, including electrical distribution facilities and communication, shall be installed underground along residential streets, unless otherwise approved by the City Manager, or his designee. Temporary electrical service may be installed above ground adjacent to unplatted property along residential streets. However, these lines must be placed underground as adjacent property develops. Electrical and/or communication utility lines shall be installed underground in compliance with utility service regulations. Electrical utility service to non-residential properties from overhead distribution lines shall be placed underground from the right-of-way to the point of service. Developers are encouraged to install all utilities underground on each property. Existing overhead facilities which follow existing routes, right-of-ways, and/or easements may remain and may be repaired, replaced, upgraded, or relocated along the same general route, while new overhead distribution feeders and major circuits may be constructed or extended.

Sec. 30-359 - Same—Conformance with public improvements.

- (a) For the purpose of conforming underground or overhead facilities for public improvements, and as allowed by, or consistent with, state or federal laws governing such conformance, and if it shall be deemed necessary by the City Manager, or his designee, to undertake such conformance, such conformance shall be accomplished by user, at the user's expense and direction, within 90 days from receipt of notice from the City to user unless a longer time schedule has been approved by the City Manager, or his designee. The City Manager, or his designee, will consider all reasonable and economical public improvement alternatives prior to requiring conformance. User may notify the City Manager, or his designee, of options other than conformance.
- (b) Facilities that do not conform after 90 days to the stated purposes set forth in subsection 50-359(a), or within an extended schedule approved by the City Manager or his designee, are subject to removal from the right-of-way by the City. If removal occurs, City shall not be liable for damages or other compensation to user, but the City shall be responsible for reasonable care of such removed facilities while such facilities are in City custody and until user takes possession of such removed facilities. The City shall bear no responsibility for removed facilities not repossessed by user within 30 days after the City has taken custody of removed facilities.
- (c) Whenever it shall be necessary to require user to conform its facilities within the right-of-way, such conformance shall be made without claim

for reimbursement or damages against the City. It is understood and further provided, however, that the City shall not require user to remove its facilities entirely from the right-of-way. If the City requires user to conform its facilities to enable any entity or person other than the City to use, or to use with greater convenience, right-of-way, user shall not be required to conform its facilities until such other entity or person shall reimburse or make arrangements satisfactory to user to reimburse user for any loss and expense caused by or arising out of such conformance.

Sec. 50-360 - Erosion control.

- (a) Erosion control measures, including but not limited to, backfill, silt fencing, advance warning signs, markers, cones, and barricades shall be in their proper locations before construction begins in the right-of-way. The user shall be responsible for storm water management erosion control that complies with City, state, and federal guidelines. Requirements may include, but not be limited to, silt fencing in erosion areas until reasonable vegetation is established and wire-backed silt fencing around high erosion areas.
- (b) A user may be required to show proof of plans approved by the Environmental Protection Agency relating to storm water and erosion, when applicable, or in the alternative, written documentation verifying that user is not required to obtain such plans.

Sec. 50-361 - Traffic control.

Unless an emergency exists, as that term is defined herein, traffic lane closures in the right-of-way which obstruct the flow of traffic for longer than four hours at a time may be allowed only under the direction and permission of the City Engineer and in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD) and other applicable local, state or federal law, except that the flow of traffic on collectors or arterials cannot be obstructed for any period of time except under the direction and permission of the City Manager, or his designee, and in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD) and other applicable local, state or federal law.

Sec. 50-362 - Street/sidewalk cuts.

- (a) Except in the event of an emergency as defined under this Division, when a street or sidewalk cut is required, prior approval must be obtained from the City Manager, or his designee, and all requirements of this Division and other applicable ordinances must be followed.
- (b) Prior to excavation of a street or sidewalk, a user shall be in compliance with all local, state, and federal laws.

- (c) All trenches in asphalt or concrete-surfaced areas shall have a clean, straight cut through the pavement surface prior to removal of the surface, in accordance with City specifications. Any cuts in sidewalks, including those cuts required in the event of an emergency as defined under this Division, shall be made at existing control joints.
- (d) Except in the event of an emergency as defined under this Division, a user shall notify the City Manager, or his designee, not less than two hours prior to commencing a street or sidewalk cut.
- (e) A user shall comply with proper traffic control during a street or sidewalk cut. Traffic control shall be in conformance with the MUTCD and other applicable local, state, and federal law.
- (f) A user shall be responsible for obtaining line locates from all affected facilities prior to executing any street or sidewalk cut.

Sec. 50-363 - Backfill.

- (a) Backfill shall be constructed pursuant to the directions of the City Engineer. A user shall notify the City Engineer and City Manager, or his designee, at least two hours prior to beginning backfill operations. Failure to so notify may result in suspension of construction and removal of any unauthorized installed backfill.
- (b) Densities may be taken to ensure compliance with standard backfill requirements. At least five days prior to the commencement of the backfill operations, a user shall submit to the City Engineer and City Manager, or his designee, a sample of the backfill material to be used by the user at the construction site.
- (c) In excavations 18 inches or less in width, or where for any reason compaction cannot be achieved with gravel backfill, flowable concrete shall be used in place of gravel backfill in all areas within three feet of the back of the curb or the edge of pavement. Flowable fill shall conform to the directions of the City Engineer.

Sec. 50-364 - Right-of-way inspections.

- (a) The City Manager, or his designee, shall inspect right-of-way construction and shall determine the hours and schedule for inspections required to be performed pursuant to this Division. A user may contact the City Manager, or his designee, for a schedule of such inspections.

- (b) The fact that an inspection has been performed does not relieve, excuse, or otherwise alleviate or minimize a user's obligations of otherwise complying with this Division or from complying with other obligations or specifications legally imposed on a user.

Sec. 50-365 - Substandard construction.

- (a) Any person performing construction in City right-of-way shall perform such construction in a manner that complies with this Division, other applicable local, state, and federal laws.
- (b) Facilities installed after the effective date of this Division shall be presumed to be improperly constructed and substandard if:
 - (1) The construction endangers, or is reasonably likely to endanger, the general public or persons using the constructed right-of-way;
 - (2) The facilities do not meet applicable City codes, state or federal law;
 - (3) The facilities are not capable of being reasonably located;
 - (4) The facilities are not located in the proper place in accordance with this Division or the directives provided by the City Engineer or City Manager;
 - (5) The facilities are placed in an area that disturbs facilities which are City-owned or leased; or,
 - (6) Facilities constructed or to be constructed are within three feet horizontally of such City-owned or leased facility.
 - (7) Substandard construction is unacceptable to the City under this Division and may be ameliorated by the City or by a third party at the direction of the City, and the user shall be liable for the costs of such amelioration. Before amelioration is undertaken by the City or by a third party at the direction of the City, the user shall be provided notice and allowed ten days, or a longer period of time if requested by the user and granted by the City Manager, or his designee, to bring the construction up to applicable standards acceptable to the City.

Sec. 50-366 - Damage/destruction; liability.

- (a) Without intending to affect or determine the legal relationship between a user and any third party, a user shall be liable for any property damage or

destruction caused by the user, or by any contractor or subcontractor of the user, as a result of the user or any contractor or subcontractor of the user constructing in the right-of-way. A designated agent or representative of a user shall be available to the City Manager, or his designee, for contact purposes in the event of damage or destruction.

- (b) A user shall notify the City Manager, or his designee, upon occurrence of any damage or destruction to any facility or other property owned or leased by a third party or by the City, in connection with construction occurring in the right-of-way, if such occurrence happens during a City business day. If the occurrence happens on a day other than a City business day, notification must be given by 9 a.m. on the first City business day following the occurrence.

Sec. 50-367 - Restoration of property.

- (a) Surface restoration shall be constructed as designated on the construction permit and as required by the City Manager, or his designee. A user shall notify the City Manager, or his designee, not less than two hours prior to the placement of surface restoration material. Failure to do so may result in the suspension of construction and the removal of any surface material placed without prior approval.
- (b) A user shall be responsible for having all abandoned facilities removed within seven calendar days after their abandonment unless otherwise extended by the City Manager, or his designee, or unless the City Manager, or his designee, determines that such abandoned facilities should not be removed after a request is made to the City Manager, or his designee, that the facilities should not be removed.
- (c) During a cessation in the construction or after completion of the construction, and in order to avoid safety hazards to vehicles and pedestrian traffic, all street and sidewalk construction shall be restored by a user within a reasonable period of time to be determined by the City Manager, or his designee.
- (d) A user shall restore property damaged or destroyed by construction on or adjacent to the right-of-way to a condition that is as good as or better than the pre-existing condition of the right-of-way or adjacent property, as determined by the City Manager, or his designee. The City Manager, or his designee, shall reject or accept restoration within three City-business days after a user presents to the City Manager, or his designee, that the restoration is completed.
- (e) Restoration shall be completed in a timely manner as specified by schedules prepared and provided by the City Manager, or his designee.

- (f) If restoration is not completed in a timely manner as specified and is not satisfactory and acceptable to the City, the City Manager, or his designee, may suspend all construction in progress except that relating to the restoration, including all construction previously permitted but not complete, and the City Manager, or his designee, may suspend the approval of permits not approved until the restoration is completed in a timely manner as specified and made satisfactory and acceptable to the City.
- (g) At the direction and approval of the City Manager, or his designee, restoration by a user shall include, but not be limited to the following, if such is damaged or destroyed as a result of right-of-way construction:
 - (1) All ground cover and landscaping;
 - (2) Manholes, hand holes, vaults, pull boxes, valve covers, clean-outs, and the such-like;
 - (3) Daily back-filling, covering, or barricading of all bore pits, potholes, trenches, or any other holes occurring as a result of the construction on the right-of-way, unless other back-filling alternatives are approved by the City Manager, or his designee, to the extent such daily back-filling, covering, or barricading shall secure the site as safe for pedestrian or vehicular traffic, as the case may be, provided that if the excavation is within the roadway or on or adjacent to a sidewalk, the excavation must be back-filled daily or covered with a one-inch thick steel plate with spikes welded to the underside to prevent slippage, and if greater than one inch, the upstream side shall have an asphalt ramp;
 - (4) Leveling all trenches and backhoe lines;
 - (5) Sprinkler systems;
 - (6) Traffic control devices, equipment, and appurtenances; and,
 - (7) Otherwise restoring the right-of-way and construction site to City specifications pursuant to this Division and this Code.
 - (8) All locate flags shall be promptly removed by a user upon completion of construction.

Sec. 50-368 - New streets.

The City shall maintain and reasonably make available a list of all streets improved for the prior five years. No right-of-way construction shall be allowed in the pavement of the listed streets except in an emergency or as otherwise approved by the City Manager, or his designee.

Sec. 50-369 - Notice to adjoining property owners.

A user shall notify adjoining property owners not less than 24 hours in advance of any construction unless such construction constitutes an emergency as defined and applied herein.

Division 2 – Network Nodes and Node Support Poles

Sec. 50-370 – Purpose.

The purpose of this Division is to:

- (a) Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy and maintenance of its public rights-of-way by wireless network providers;
- (b) Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and
- (c) Assist the City in protecting the public health, safety, and welfare.

Sec. 50-371 – Governing Law

This Division shall be construed in accordance with Chapter 284 of the Texas Local Government Code (“the Code”) to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

Sec. 50-372 – Definitions

For the purpose of this Division, the definitions found in the *City Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) are hereby incorporated into this Division and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this Division:

Applicable codes means:

- (a) the City uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(b) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of McGregor, Texas or its lawful successor.

City Council means the municipal governing body of the City of McGregor, Texas.

City Manager means the City Manager of the City of McGregor or his/her designee.

Chapter 284 means Texas Local Government Code, Chapter 284.

Code means the Texas Local Government Code.

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 City codes and ordinances.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an 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.

Local means within the geographical boundaries of the City.

Location means the City-approved and lawfully permitted location for the Network Node.

Mayor means the mayor of the City of McGregor, Texas, or designee.

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.

Municipal park means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity.

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.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, City-owned utility pole, node support pole, or utility pole.

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.

Provider has the same meaning as "Network Provider."

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 City 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.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City 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.

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A "Street" is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A "Street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

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.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

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 Chapter 284, 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.

Wireless facilities mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code, Chapter 284.

Sec. 50-373 – Use and Occupancy of Public Rights-of-Way

Pursuant to this division and subject to the Design Manual and the Code, a wireless network provider has the nonexclusive right to use and occupy the public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless facilities.

The terms of this division shall apply to all wireless network providers' facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later.

Sec. 50-374 – Compliance With Design Manual and Applicable Codes

All wireless network providers shall comply with the terms of this right-of-way management ordinance, City applicable codes, and the terms and conditions of the City's Design Manual.

Sec. 50-375 – General Construction and Maintenance Requirements

A network provider shall construct and maintain Network Nodes and Network Support Poles described in the Code in a manner that does not:

- (A) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- (B) Obstruct the legal use of a public right-of-way by other utility providers;
- (C) Violate nondiscriminatory applicable codes;
- (D) Violate or conflict with the City's publicly disclosed public right-of-way design specifications; or
- (E) Violate the federal Americans with Disabilities Act of 1990 (ADA).

Sec. 50-376 – Permit Applications

(A) Except as otherwise provided in Chapter 284 of the Code, a network provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public right-of-way.

(B) As required by Chapter 284 of the Code, the City shall not require a network provider to perform services for the City for which the permit is sought.

(C) A network provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.

(D) The network provider shall provide the following information in its permit applications:

- (1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's Design Manual and applicable codes;
- (2) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this division;
- (3) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the 60th day after the date of construction and final testing of each Network Node is completed.
- (4) A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage.

(E) **Exception:** As provided in Section 284.157 of the Code, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:

- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) Replacing or upgrading a Network Node or Network 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
- (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code;
- (4) Notwithstanding Subdivision (D) above, the network provider or its contractors shall notify the City at least 24 hours in advance of work described in this Subdivision (D).

Sec. 50-377 – Installation in Historic Districts or Design Districts

A network provider must obtain advance written consent from the City Council before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Design Manual. The City has the authority to designate new historic districts and design districts at a future date.

Sec. 50-378 – 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 Council's discretionary, nondiscriminatory and written consent if the public right-of way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
 - i. Not more than 50 feet wide; and

- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (3) In addition to the above, a network provider installing a Network Node or Node Support Pole in a public right-of way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.
- (4) The network provider shall be further required to comply with guidelines set out in the City's Design Manual.

Sec. 50-379 – Municipal Review Process by the City

(A) **Determination of Application Completeness:** The City shall determine whether the permit application is complete and notify the applicant of that determination:

- (1) *For Network Nodes and Node Support Poles:* no later than 30 days after the date the City receives the permit application.
- (2) *For a Transport Facility:* no later than 10 days after the date the City receives the permit application.

(B) **Approval or Denial of Application:** The City shall approve or deny a completed application after the date it is submitted to the City:

- (1) *For Network Nodes:* No later than 60 days after the date the City receives the complete application.
- (2) *For Network Support Poles:* No later than 150 days after the date the City receives the complete application.
- (3) *For Transport Facilities:* No later than 21 days after the City receives the complete application.

(C) **Basis for Denial of Application:** If an application is denied by the City, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.

(D) **Resubmission of Denied Application:** The applicant may cure the deficiencies identified in the denial application.

- (1) The applicant has 30 days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the City.
- (2) The City shall approve or deny the revised completed application after a denial not later than the 90th day after the City receives the revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.

(E) **Nondiscriminatory Review:** Each completed application shall be processed by the City on a nondiscriminatory basis.

Sec. 50-380 – Time of Installation

A network provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. The City Manager may in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

Sec. 50-381 – Applicable Fees and Rental Rates to the City

(A) As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.

(B) **Network Nodes:**

- (1) **Application Fee:** The application fee shall be \$100.00 for each Network Node for up to but not more than 30 Network Nodes.
- (2) **Annual Public Right-of-Way Rate Fee:** The annual public right-of-way rate shall be \$250.00 per Network Node installed in the City public rights-of-way.
- (3) **Public Right-of-Way Rate Adjustment:** As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). 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 the written notice.

(C) **Node Support Poles:**

- (1) The application fee for each Network Support Pole shall be \$100.00.

(D) **Transfer Facilities:**

- (1) The application fee for each Transfer Facility shall be \$100.00.
- (2) The annual Transfer Facility rental rate shall be \$28.00 monthly for each Network Node site located in a public right-of-way. However, no rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

(E) **Micro Network Nodes:**

- (1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.

(F) **Collocation of Network Nodes on Service Poles**

- (1) Subject to the City's Pole Service Agreement, the collocation of Network Nodes on City service poles shall be at a rate of \$20.00 per year per service pole.

(G) City-Owned Municipal Utility Poles:

- (1) A network provider shall pay an annual pole attachment rate for the collocation of a Network Node supported by or installed on a City-owned utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

(H) The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of the public rights-of-way for use of the public rights-of-way.

Sec. 50-382 - Indemnity

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions ("claims") covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

Sec. 50-383 – Effect on Other Utilities and Telecommunication Providers

Nothing in this Ordinance shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

Section 2. All other ordinances or parts of ordinances inconsistent or in conflict herewith, or to the extent of such inconsistency or conflict, are hereby repealed.

Section 3. If any section, sentence, clause or phrase contained within this Ordinance is declared invalid by a court of competent jurisdiction, such declaration or decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, and they shall remain in full force and effect.

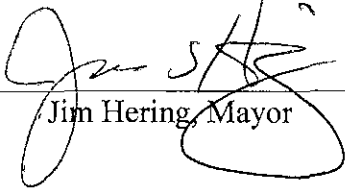
Section 4. It is officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place

and purpose of said meeting was given in compliance with the Texas Open Meetings Act, Chapter 551, Texas Government Code.

Section 5. This Ordinance shall become effective upon its passage.

PASSED AND APPROVED on this the 28th day of August, 2017.

CITY OF McGREGOR, TEXAS

By: _____
Jim Hering, Mayor

ATTEST:

_____
Angelia Sloan, City Secretary