

ORDINANCE NO. 3928
(Amending Title 17, Right-of-Way Management, Telecommunications Facilities)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, AMENDING THE HENDERSON MUNICIPAL CODE, TITLE 17, RIGHT-OF-WAY MANAGEMENT, TELECOMMUNICATIONS FACILITIES, TO PROVIDE FOR COMMUNICATIONS FACILITIES USED TO TRANSMIT, ROUTE, OR OTHERWISE PROVIDE SERVICES REGULATED BY THE PUBLIC UTILITIES COMMISSION OF NEVADA.

WHEREAS, City Council adopted Ordinance 3581 on June 4, 2019, adding Title 17, Right-of-Way Management, Telecommunications Facilities, to the Henderson Municipal Code, by which City Council established a local policy concerning right-of-way management for wireless and wireline facilities used in providing telecommunications service, as defined in 47 U.S.C. § 153(53), to permit and manage reasonable access, in a nondiscriminatory manner to right-of-way in the City of Henderson for telecommunications facilities, manage physical capacity of the right-of-way held in public trust by the City and municipal facilities, recover public costs of permitting private use of City right-of-way and municipal facilities, and ensure all providers of telecommunications facilities within the City comply with all ordinances, rules and regulations of the City; and

WHEREAS, amendments to Title 17 are intended to clarify that Title 17 applies to all communications facilities in the right-of-way in the City of Henderson, including information services, as defined under 47 U.S.C § 153(24), by providers of communications services which are issued certificates or letters of registration by the Public Utilities Commission of Nevada; and

NOW THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. Title 17 is hereby amended to read as follows:

Title 17 – RIGHT-OF-WAY MANAGEMENT – [TELE]COMMUNICATIONS FACILITIES

SECTION 2. Section 17.01.010 – Definitions is hereby amended to read as follows:

17.01.010 - Definitions.

For the purpose of administering this Title, the words and terms set forth in this Title shall be defined as follows:

“Applicant” means the person who submits a completed application and required supporting materials as set forth in this Title for a license authorization to install and operate communications facilities. For convenience, the term “applicant” will also refer to a person submitting a request for a use agreement.

“Application” means all written documentation, including written statements, representations, and warranties, provided to the City, in accordance with this Title, by a prospective licensee, which may be relied upon by the City in making its determination of whether to grant or deny a license authorization to install and operate communications facilities.

“Authorization fee” means a licensed location authorization fee or a licensed wireline authorization fee.

“Business license” means the written authorization required by the City for any person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment, as delineated in Title 4 of the Code, within the City.

“City Manager” means the City Manager of the City and the City Manager’s designee(s).

“Commercial mobile radio services” or “CMRS” has the meaning given to the term “commercial mobile radio service” as defined in 47 CFR § 20.3.

“Commercial mobile service” has the meaning given to the term “commercial mobile service” as defined in 47 U.S.C § 332(d).

“Communications facilities” or “facilities” means wireless communications facilities and wireline communications facilities.

“Communications service” or “services” means information service and telecommunications service.

“Construction completion” or “installation completion” means that time and date when all facilities have been installed and all public right-of-way and properties have been restored to their former appearance and condition in a manner acceptable to the City.

“Decorative streetlight pole” means any streetlight pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically found in standard metal streetlight poles. The term “decorative streetlight pole” includes any historically or architecturally significant or designated streetlight poles.

“Director” means the City departmental director of the department specifically named, or his/her designee.

“Encumbrances” means any public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title.

“The Federal Communications Commission” or “FCC” means the independent agency of the United States government created by federal statute to regulate interstate communications by radio, television, wire, satellite, and cable, and its predecessors and successors.

“Information service” has the **[same]** meaning **[as that term is defined]** given to the term in **[the]** 47 U.S.C § 153(24).

“Laws” mean any and all federal, state and local statutes, constitutions, ordinances, charters, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, or orders of the City or other governmental agency having joint or several jurisdiction over the parties to a Master Use Agreement, or License Authorization, including the Code of Federal Regulations (CFR), the Code, Nevada Revised Statutes (NRS) and United States Code (U.S.C.), as such laws may be amended from time to time.

“License authorization” means a licensed location authorization or a licensed wireline authorization.

“Licensed location” means a location in the right-of-way or on municipal facilities in which licensee is authorized pursuant to a fully executed use agreement and license authorization to place its communications facilities.

“Licensed location authorization” or “LLA” means an authorization granted by the City with respect to a licensee’s construction, installation, and operation of wireless communications facilities for each specific site in the City’s right-of-way or on municipal facilities. All of the terms and conditions of this Title and the corresponding use agreement for a licensee shall be incorporated by reference into each LLA.

“Licensed wireline authorization” or “LWA” means an authorization granted by the City with respect to a Licensee’s construction, installation, and operation of wireline communications facilities for each specific location in the City’s right-of-way or on municipal facilities. All of the terms and conditions of this Title and the corresponding use agreement for a licensee shall be incorporated by reference into each LWA.

“Licensee” means a person who has entered into a fully executed use agreement with the City.

“Licensee pole” means pole(s) or similar vertical structure(s) approved by City to be installed and used by Licensee in the right-of-way in accordance with this Title and owned and installed by licensee for the primary purpose of physically supporting communications facilities. A licensee pole does not include a replacement municipal facility.

“Master use agreement” means an agreement between a person and the City that generally defines the terms and conditions which govern their relationship with respect to a licensee’s wireless communications facilities and wireline communications facilities in the City’s right-of-way or on municipal facilities.

“Marker” means a device that physically designates the location of a subsurface facility at intermittent locations along, within, or immediately above the subsurface facility and includes, without limitation, a device containing a passive antenna that can be identified with detection equipment and does not require an internal power source.

“Municipal facilities” means City-owned streetlight poles, decorative streetlight poles, lighting fixtures, or electroliers, including replacement poles installed by a licensee, owned by the City that are located within or immediately adjacent to the right-of-way and may refer to such facilities in the singular or plural, as appropriate to the context in which used. Municipal facilities do not include traffic signal poles, school zone flashers or any related appurtenances.

“Network” means all facilities and equipment, and all features, functions and capabilities provided by means of such facilities or equipment, used in the transmission, routing, or other provision of, or in connection with, a **[telecommunications service and/or information]** communications service in or through the City.

“Person” means a natural person, any form of business or social organization and any other nongovernmental legal entity, including, but not limited to, the estate of a natural person, a corporation, partnership, association, trust, or unincorporated organization. The term “person” does not include a government, governmental agency, or political subdivision of a government.

“Public Utilities Commission of Nevada” or “PUCN” means the Public Utilities Commission of the State of Nevada, and its predecessors and successors.

“Right-of-way” or “ROW” means the surface of, and the space above and below, any and all public highways, streets, roads, alleys, and avenues, as the same now or may hereafter exist within the city, excluding (as now or hereafter established within the city) (a) state highways; (b) public streets, roads, alleys, and avenues predominantly used for public freeway or expressway purposes or a City park; (c) public streets, roads, alleys, and avenues where a Licensee’s use is not expressly permitted by the granting instrument; and (d) City streets, roads, alleys, and avenues that are not typically open to the general public.

“Standards manual” or “standards” means any requirements for the design, construction, installation, operation, maintenance, condition, modification, repair, relocation or removal of communications facilities and supplements to the provisions of this Title that are prepared and made public by the Department of Public Works as revised from time to time at the discretion of the Director of Public Works.

“Street” means the surface, the air space above the surface and the area below the surface of the full width of the right-of-way, including sidewalks.

“Streetlight pole” shall mean any standard-design metal pole that has a mast arm for the support of a light fixture, is owned by the City, and is used for street lighting purposes.

“Standard design” is defined as a pole in conformance with streetlights approved for use in the City of Henderson as shown in the Uniform Standard Drawings, Clark County Area, latest edition, or as authorized by City in a written agreement. Streetlight pole does not include traffic signal poles, school zone flashers, or any related appurtenances, nor any pole supporting a streetlight that is made from any material other than metal or any pole located in the parking lot of any City facility, park, or other non-roadway facility.

“Telecommunications service” [or “services”] has the meaning given to the term “telecommunications service” in 47 U.S.C. § 153(53).

“Telecommunications use agreement” means an agreement between a person and the City that generally defines the terms and conditions which govern their relationship with respect to a licensee’s wireline communications facilities in the City’s right-of-way or on municipal facilities.

“Third-party structures” means poles or other structures in the ROW lawfully owned and operated by a third party(ies) and lawfully located in the ROW.

“Tracer wire” means a locating wire that is installed inside or immediately adjacent to a subsurface facility and is connected to a transmitter that carries a signal that can be read by a receiver above the surface of the ground for the detection of the location of the subsurface facility.

“Traffic signal pole” means any standard-design pole that is owned by City and is used for traffic signal or traffic control purposes, including the controller cabinet and all appurtenances related to the operation of the traffic signal system.

“Use agreement” means a master use agreement, telecommunications use agreement or wireless use agreement.

“Wireless communications facilities” means optical repeaters, wave division multiplexers, antennas, ancillary coaxial or fiber-optic cables, regular and backup power supplies, wires, radios, modems, and comparable equipment, including any appurtenant or supporting poles, structures or devices, that may be used for transmitting, processing, and receiving wireless voice and data by means of an antenna array through which a person provides commercial mobile service, commercial mobile radio service and/or other wireless [tele]communications service.

“Wireline communications facilities” means (a) fiber-optic cables, connectors, amplifiers, transmitters, wires, instruments, and associated equipment, each of which is compliant with all applicable FCC regulations and is used to transmit, route, or provide a wireline [tele]communications service; (b) markers; (c) tracer wires; and (d) conduit, handholes, manholes, pedestals, cabinets, poles and similar structures commonly associated with the construction of wireline fiber-optic communications networks.

“Wireless use agreement” means an agreement between a person and the City that generally defines the terms and conditions which govern their relationship with respect to a licensee’s wireless communications facilities in the City’s right-of-way or on municipal facilities.

SECTION 3. Section 17.02.040 – Request for a Use Agreement is hereby amended to read as follows:

17.02.040 - Request for a Use Agreement.

The following procedures will apply to all requests for new use agreement or renewals thereof:

- (A) An applicant shall make a written request to the City Manager for a use agreement on a form, which may be updated from time to time, that is available at the City of Henderson, Department of Public Works.
- (B) An applicant shall pay to the City the applicable use agreement fee listed in Chapter 17.03. Failure to pay the fee will cause the request to be deemed incomplete.
- (C) In addition to other information required by the request for a use agreement, an applicant will provide:
 - (1) A copy of all certificates or letters of registration issued by the PUCN pertaining to Applicant’s activity in the right-of-way.
 - (2) A copy of all City business licenses pertaining to applicant’s activity in the City.
 - (3) A statement that applicant will have sole ownership and control of the facilities and, if not, a list of persons other than applicant known at the time of the request that will own or control any portion of the facilities.
- (D) When a request is certified as complete by the Department of Public Works, and a use agreement has been executed and delivered by applicant, the use agreement will be presented to the City Manager for approval or denial. If the request is approved, the Department of Public Works will issue a use agreement. If the request is denied, the Department of Public Works will notify a licensee in writing.
- (E) The City Council authorizes the City Manager to approve and deny requests under this Title and to execute use agreements, and amendments to the same to the extent required by law, on behalf of the City.

Editor’s Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in **[brackets]**, and language proposed to be added is in *blue italics and underlined*.

SECTION 4. Section 17.02.060 – Application for a License Authorization is hereby amended to read as follows:

17.02.060 - Application for a License Authorization.

The following procedures will apply to all applications for new license authorization or renewals thereof:

- (A) Application. The Department of Public Works shall prepare and make publicly available an application form requesting information necessary for the City to consider an application for installation of a communications facilities on municipal facilities or in right-of-way. The application form may be revised at the discretion of the Director of Public Works.
- (B) License Authorization Application Fee. Licensee shall pay to the City the license authorization application fee listed in Chapter 17.03.
- (C) License Authorization Application Requirements. In addition to other information required by the application for a use agreement, an applicant shall:
 - (1) Have obtained or applied for a business license with the City.
 - (2) Have obtained or applied for a use agreement with the City.
 - (3) If the application is for wireless communications facilities, identify in decibels the minimum and maximum intensity of noise generated by the communications facilities.
 - (4) Include the proposed design showing the proposed communications facilities or third-party pole, including the configuration of any proposed installation of communications facilities, the proposed location of the communications facilities or licensee pole, the structure licensee proposes to install the communications facilities on (specifically, a municipal facility, third-party structure, or licensee pole), and any other documents necessary for City to review the application or requested by City, such as a noise study for wireless communication facilities.
 - (5) Clearly depict power, backhaul, and cable routes and connections, any proposed pavement trenching or cuts in all application materials and the method of detecting underground communication facilities.

- (6) If any licensee pole or communications facilities is or is proposed to be located in, on, above, or under real property not owned by City in fee, Licensee (a) shall obtain and maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to licensee per the Code and an executed use agreement; and (b) by using such real property for the installation, operation, maintenance, management, and removal of communications facilities or a licensee pole, represents to City that licensee has obtained and shall maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to licensee per the Code and an executed use agreement. If licensee believes such other consents, permits, licenses, easements or grants are not necessary, licensee shall represent to City in connection with licensee's application for a licensed location(s) that licensee's use of such real property not owned by City in fee for a licensee pole and/or communications facilities is allowed by, is consistent with, does not violate, and does not overburden City's easement for, prescriptive right for, or other right to use such real property.
- (7) Except as otherwise provided under this Title or the Code, to the fullest extent permitted by law, requests for the installation of licensee poles or the installation of communications facilities on licensee poles will be granted only if the denial of such request would prohibit or have the effect of prohibiting [tele]communications service. In the event that no municipal facilities or third-party structure is technically feasible for use, installation on licensee-owned suspension cable is not technically feasible for use, or City does not approve such an installation(s), licensee may request the installation of a licensee pole at its sole cost and expense by following the applicable procedures set forth under the Code, this Title, the use agreement and the standards manual. If licensee proposes to install a licensee pole in the right-of-way and/or proposes to install any communications facilities in or on a licensee pole, licensee (a) shall obtain and maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to licensee per the Code, this Title, the use agreement and the standards manual; and (b) represents to City in writing and demonstrates to City that the failure to approve the licensee pole in the right-of-way would prohibit or have the effect of prohibiting the provision of commercial mobile service, commercial mobile radio service, and/or [tele]communications service. Written approval of the Director of Public Works is required for installation of any licensee poles.

- (D) Minimize Pavement Cuts. Licensee is hereby notified of City's desire to minimize any pavement cuts that, as determined by City in its sole discretion, significantly reduce the longevity of the public's investment in the roadway network. Any communications facilities, pole design, or installation configuration not contained within the use agreement must receive additional written approval by the City Manager before it may be placed within the right-of-way. This process is separate and apart from any application Licensee must submit to City in accordance with Title 11 or 19 of the Code.
- (E) City Decision. If the application is approved, the Department of Public Works shall issue a license authorization. If the application is denied, the Department of Public Works shall notify a licensee in writing.
- (F) Execution by the City. The City Council authorizes the Director of Public Works, and the Director of Community Development and Services, to sign and execute license authorizations on behalf of the City.

SECTION 5. Section 17.03.010 – Compensation is hereby amended to read as follows:

17.03.010 - Compensation.

A licensee shall be solely responsible for the payment to the City of all lawful fees in connection with a licensee's performance under its use agreement and license authorizations, including those set forth below, except where prohibited by law. To the fullest extent permitted by law, the City Manager may adjust the fees specified under this Title from time to time provided that the adjusted amount(s) must be made publicly available and may not exceed the amounts specified hereunder.

- (A) Business License Fees. All business licenses shall be maintained, and fees paid in accordance with Title 4 of the Code at all times during the use of the right-of-way or municipal facilities for communications facilities.
- (B) Licensed Location Authorization Fees. A fee shall be paid for each wireless communications facility contained in a licensed location authorization. The annual amount due for each wireless communications facility shall be (1) the amount established and made publicly available by the City Manager, which amount may not exceed Two Thousand Four Hundred Dollars (\$2,400.00) per location; and (2) for each licensed location authorization that authorizes installation of a licensee pole, the amount established and made publicly available by the City Manager, which amount may not exceed two thousand four hundred dollars (\$2,400.00) for each licensee pole.

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in **[brackets]**, and language proposed to be added is in *blue italics and underlined*.

- (C) Licensed Wireline Authorization Fee. A fee shall be paid for the **[tele]**communications facilities contained in a licensed wireline authorization. The annual amount due for wireline communications facilities shall be as follows:
- (1) For each licensed wireline authorization that authorizes use of a municipal facility, the amount established and made publicly available by the City Manager, which amount may not exceed two and 50/100 dollars (\$2.50) per linear foot for use of a municipal facility that is City-owned cable.
 - (2) For each licensed wireline authorization that authorizes use of a municipal facility, the amount established and made publicly available by the City Manager, which amount may not exceed one and 50/100 dollars (\$1.50) per linear foot for use of a municipal facility that is City-owned conduit.
 - (3) For each licensed wireline authorization that authorizes use of a municipal facility, the amount established and made publicly available by the City Manager, which amount may not exceed one and 50/100 dollars (\$1.50) per linear foot for use of a municipal facility that is not City-owned conduit or cable.
 - (4) For each licensed wireline authorization that authorizes installation of a licensee pole, the amount established and made publicly available by the City Manager, which amount may not exceed two thousand four hundred dollars (\$2,400.00) for each licensee pole.
- (D) Commencement of Authorization Fees. The authorization fee commencement date shall be the execution date of each license authorization.
- (E) Initial Fee. The first annual authorization fee is due the first day of the month following the commencement date as determined in Section 17.03.010(D). Subsequent annual fees shall be due the first day of July. If City issues a new license authorization during a payment period, City will prorate the amount for that authorization for the applicable period by taking the total number of days between the effective date of that authorization and the end of the period, multiplying that total number of days by the amount of the fee and dividing by three hundred sixty-five (365) in the case of payments due on an annual basis.
- (F) Annual Fee Adjustment. Effective on July 1, 2020, and continuing annually thereafter, the authorization fee shall be increased by two and one-half percent (2.5%) of the amount of the authorization fee for the immediately preceding year, rounded to the nearest whole dollar.

- (G) Use Agreement Fee. The use agreement fee for and due at the time of each application for a use agreement shall be one thousand three hundred and 00/100 dollars (\$1,300.00).
- (H) License Authorization Application Fee. The application fee for and due at the time of each application for an LLA or LWA shall be six hundred and 00/100 dollars (\$600.00).
- (I) Work Performed by City on Behalf of a Licensee. All work performed by the City when a licensee fails to perform said work in a timely manner, as required by the Code, the standards, a use agreement, or license authorization, may be subject to an additional twenty-five percent (25%) administrative fee of the actual costs of the work performed by the City.
- (J) Unauthorized Facilities Fee: Up to five hundred dollars (\$500.00) may be assessed per unauthorized unit of communications facilities or equipment that was not authorized by a license authorization. The placement of any such unauthorized unit is a violation of this Title. With respect to violations that are continuous with respect to time, each day that the violation continues is a separate violation. With respect to violations that are not continuous with respect to time, each act is a separate violation.

SECTION 6. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

SECTION 7. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 8. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review-Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on December 9, 2022, in the Las Vegas Review-Journal.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in **[brackets]**, and language proposed to be added is in *blue italics and underlined*.

PASSED, ADOPTED, AND APPROVED THIS 6th DAY OF DECEMBER, 2022.

Debra March, Mayor

ATTEST:

Jose Luis Valdez, CMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on November 15, 2022, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

“COUNCIL AS A WHOLE”

Thereafter on December 6, 2022, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held December 6, 2022, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye:

Debra March, Mayor
Councilmembers:
John F. Marz
Michelle Romero
Dan K. Shaw
Dan H. Stewart

Those voting nay: None
Those abstaining: None
Those absent: None

Debra March, Mayor

ATTEST:

Jose Luis Valdez, CMC, City Clerk