



# City of Pflugerville

## Legislation Text

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**File #:** ORD-0522, **Version:** 3

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Approving an ordinance on second reading with the caption reading: An Ordinance of the City of Pflugerville adding Section 11 Wireless Services Design for Network Nodes, Node Support Poles and Transfer Facilities to the 2014 Engineering Design Manual and Construction Standards, replacing all Engineering and Construction Standards in conflict; Containing a savings clause; Containing a severability clause; and providing for publication and an effective date.

At the June 9th City Council meeting, Staff presented proposed changes to Chapter 96 of the Code of Ordinances and Council provided feedback including several questions and concerns that have been addressed relating to the current Chapter 96. As a result of that discussion, Sections 96.01, 96.08 and 96.09 have been reviewed and discussed with Legal Counsel and are now proposed separately as Ordinance updates to the applicable chapters. Chapter 96, Section 96.01 “Obstructing Streets & Sidewalks” and Section 96.08 “Repair of Defective Sidewalks” have both been removed from the current proposed Right-of-Way Management Ordinance and are proposed to be relocated within Title XIII General Offense, Chapter 130 “Offenses Against City Regulations” as New Section 130.2 and Section 130.3 respectively, as offenses applicable under Chapter 130. Chapter 96, Section 96.09 “Braking Devices Prohibited” has also been removed from the current proposed Right-of-Way Management Ordinance and will be relocated within Title VII Traffic Code, Chapter 70 “Traffic Rules” as a New Section 70.3.

Staff has coordinated with legal regarding the modification to the proposed Right-of-Way Management Ordinance to account for a need for a Demolition Bond per concerns of City Council at the June 9<sup>th</sup> meeting. Chapter 96, Section 96.80(C) has been updated to clarify the requirements of the pole attachment agreement in which a similar type Demolition Bond will be required with Pole Attachment agreement, as required by the proposed provision 96.72(B) for surety bond for any utility provider, for consistency. The title of Paragraph, Section 96.80(C) has been modified to Pole Attachment Agreement and City Manager Authority and the first sentence has been updated to read “A network provider shall execute a Pole Attachment Agreement, including providing the required insurance and performance bond, with the City to access and use City service poles, which includes traffic lights, non-decorative street lights, and traffic signage, to dictate the terms of use...” which addressed the concern for Equipment Abandonment or providing a Demolition Bond to allow for for an applicable recovery fee for the City in the event a Network provider abandons or no longer owns a facility within the Right-of-Way.

Geotechnical Requirements and Foundations has been reviewed in the proposed Right-of-Way Management Ordinance as Section 96.48, 96.50, and 96.52 and covers information related to geotechnical changes in the ROW for proposed Network Node installations. The Engineering Design Manual Section 11.11.D.4 requires a ROW user to complete an Industry Load Analysis requirement prior to installation of Network Nodes.

Proposed Fees have been verified with Texas Local Government Code, Chapter 284 and the City’s fees are within the regulated provisions. At such time of changes with legislation, the City will modify

and update the Fee Schedule at that time.

Updates are proposed to the Engineering Design Guidelines Manual to include requirements for all Right-of-Way (ROW) users and to specifically address wireless network provider installation activities within the ROW. In addition, the design manual will establish corresponding design guidelines to ensure, to the greatest extent possible, that all construction in the right-of-way including wireless facilities are located, designed, installed, constructed, maintained and operated in a manner that meets the aesthetic and public health and safety requirements of the City. The proposed ordinance addresses the type of wireless facilities that are exempt, permitted, conditionally permitted, and prohibited. Further, it outlines the procedure for permit approval, design standards and abandonment procedures. The proposed modifications will also bring the City's regulations into compliance with Federal and State laws.

The Wireless Facilities Design standards conform to state law and add provisions related to wireless facilities in public rights-of-way, adopt design standards for siting and criteria for the installation of wireless micro network nodes, network nodes, node support poles and related ground equipment in the public rights-of-way.

In response to new developments in wireless technology and enabling legislation from both Federal and State lawmakers, telecommunications providers have been making applications to localities across the nation to place cellular wireless facilities in public ROW. In September 2017, the Texas Legislature approved Senate Bill 1004 (Bill), which adopted a new Chapter 284 of the Local Government Code mandating cities to allow private communications companies access to City rights-of-way to place wireless antennas on city light poles, traffic poles, street signs and just about any other vertical surface. This legislation greatly limits the ability of individual cities to further regulate this type of equipment. In response to legislation, for best efforts, cities have proposed Right-of-Way Ordinances and design guidelines to maintain orderly control over rights-of-way. As a result, Staff has developed the ROW Management ordinance and design guidelines.

The wireless network equipment addressed by the bill primarily includes "network nodes," which is equipment that enables wireless communications between the communications network and the user's equipment and related equipment. The provisions of Chapter 284 apply to both the "wireless service provider" who provides the service directly to the public and to "network providers" which are entities who do not provide service to the end-user, but whom build the equipment on behalf of a wireless service provider.

The purpose of this item is to consider additions to the City Code to regulate the installation of small cellular and other communication equipment in the City's rights-of-way, or "public highways" as defined in the regulations and Senate Bill 1004. Review of permits will be in the responsibility of the City's Engineering Department. The related standards are being proposed to be placed in Section 11 of the City's Engineering Design Manual.

In addition to these regulations, staff will continue to work on the development of agreements with various carriers and infrastructure companies. Companies wishing to attach equipment to the City's infrastructure must agree to a standard agreement, which will be brought to the City Council for approval. It is staff's intent that the agreement mirror these standards and regulations, while enabling carriers and City to agree on designs, preferences of locations (such as light pole before a traffic signal pole) and additional operational considerations within an agreement that could allow for

efficient deployment of a small cell network.

Background Information:

Small cellular network facilities (small cell antennas) encompass numerous technologies that are used to address cellular network capacity issues in a small area. Small cell antennas are generally used to supplement large cell towers, specifically by handling data demand. Small cell antennas are intended to support more users in a concentrated area, which should result in fewer dropped calls and better data speeds. Small cell antennas are smaller and shorter, but are typically distributed in clusters. Small cell antennas can be collocated on existing utility, light and traffic poles.

The Governor of Texas signed S.B. 1004 on June 9, 2017 with an effective date of September 1, 2017. The bill creates Chapter 284 of the Texas Local Government Code which imposes strict limitations and prohibitions on municipalities' regulation of network nodes, network support poles and transport facilities within the public right-of-way (commonly referred to as "small cell antennas") to include general construction and maintenance requirements and the maximum amount of compensation municipalities can demand from wireless providers. The bill allows attachments to any existing pole in the public right-of-way (ROW) and allows new poles in the public right-of-way with few limitations.

The bill does allow cities to adopt standards to establish guidelines in order to influence the location and appearance of these facilities in the public right-of-way.

In addition to mirroring the requirements of the bill, the ordinance requires a license agreement with any cellular provider looking to locate small cell facilities within the ROW. The bill preempts zoning consideration and approval by the City Council. As a result, the review and approval of small cell antennas with the ROW is a permitting process which is administered by staff. To that effect, the proposed ordinance outlines the provisions for permitting, installation requirements, mitigating impacts upon Town signals and communications equipment, inspections, equipment dimensions, abandonment and removal, among others.

The bill provides some regulations concerning size and location of the equipment, as well as maximum fees which can be charged. The bill does not allow cities to prohibit the installation of this equipment in the City and prevents cities from denying network providers access to city service poles (i.e. traffic signal poles, signage, light poles), although the City can require a collocation agreement for such connections. The bill does also allow some restrictions concerning the ability to install equipment in parks and residential areas. It also authorizes the City to impose heightened aesthetic and camouflaging requirements, as proposed upgrades that will be detailed in the City's Engineering Design Manual. The City may also set requirements, if the equipment is located in an area designated by the City as a design or historic district.

Small cell facilities provide supplemental support for "macro" networks, including antennas and equipment mounted on towers or building rooftops. They are intended to help carry increasing data load and allow users to have better connections and faster speeds. Small cell facilities are dual technology, supporting 4G and 5G service.

The City is compelled to allow small cell pole installations by State and Federal laws that give access to the City's public right-of-way (ROW) to wireless facility providers. The City will do its best to minimize potentially adverse impacts, but cannot prevent the use of the public ROW for this purpose.

Given the state mandate to allow these installations within City ROW, the proposed design guidelines allows the City to maintain orderly control of the review, approval, and installation process for small cell infrastructure.

The Engineering Department and City Attorney's Office recommend approval of this Ordinance on first reading, as staff has determined that the best way to protect the interests of the City, in light of Senate Bill 1004 legislation, is to establish City Right-of Way ordinance provisions to include requirements for all ROW users, amend the Master Fee schedule to provide for the new fees related to the installation of this equipment and to establish corresponding design guidelines as proposed in the Engineering Design Manual.

### **Prior City Council Action**

The City Council discussed the ordinance at their June 9, 2020 regular meeting. The City Council took action to postpone the ordinance to allow for amendment.

The City Council approved the ordinance on first reading on June 23, 2020.

### **Deadline for City Council Action**

Action is requested on second and final reading on July 14, 2020.

**Funding Expected:** Revenue  Expenditure  N/A

**Budgeted Item:** Yes  No  N/A

**Amount:** \_\_\_\_\_

**1295 Form Required?** Yes  No

**Legal Review Required:** N/A  Required  Date Completed: 06/02/2020

### **Supporting documents attached:**

Additional Background Information

Engineering Design Manual Ordinance

Engineering Design Manual Section 11

### **Recommended Action**

Approve the ordinance on second reading with the caption reading: An Ordinance of the City of Pflugerville adding Section 11 Wireless Services Design for Network Nodes, Node Support Poles and Transfer Facilities to the 2014 Engineering Design Manual and Construction Standards, replacing all Engineering and Construction Standards in conflict; Containing a savings clause; Containing a severability clause; and providing for publication and an effective date.