



City of Pflugerville

Legislation Text

File #: ORD-0521, **Version:** 4

Approving an ordinance on second reading with the caption reading: An Ordinance repealing and replacing the Code of Ordinances of the City of Pflugerville, Texas, Chapter 96, “Streets and Sidewalks”, and renaming Chapter 96 to “Right-of-Way Management”, in order to administer and regulate the use of Public Rights-of-Way for the public interest, health, safety and welfare; providing for the issuance and regulation of permits; establishing fees; providing for a penalty in an amount in accordance with Code of Ordinances, Section 10.99 General Penalty, for violation of any provision hereof; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability.

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 9th 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.

The proposed Ordinance repeals and replaces the existing Chapter 96 of the Code of Ordinances to include requirements for all Right-of-Way (ROW) users in addition to specifically addressing wireless network providers, and establishes the basis for new design guidelines that are proposed as a separate Ordinance to update the Engineering Design Manual (Item 8B). The Ordinance also includes consideration for all construction within the City's ROW to ensure to the greatest extent possible that all projects, 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.

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 to maintain orderly control over rights-of-way. As a result, Staff has developed the ROW Management ordinance.

City staff hosted a Utility Coordination meeting in August 2019 to present and discuss the City's Draft Right-of-Way Ordinance while receiving feedback and questions from Utility Providers for upcoming wireless technology. Staff provided a PowerPoint presentation outlining expectations for new Right-of-Way permit process, preview of proposed fees and upcoming Ordinances incorporating Network Nodes and Wireless technology in the Public Right-of-Way, while balancing all user's needs. Utility Providers were requested to review and provide comments to the proposed Draft Ordinance and City staff provided responses accordingly. Since that time, staff has incorporated changes to the ordinance based on the feedback received and has been in coordination with the Utility entities. The City has received the first Small Cell ROW Permit application and should anticipate seeing more soon.

The wireless network equipment addressed by the Bill and proposed ordinance 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 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. However, the Bill does 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 ordinance 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, allow for implementation of the approved new fees related to the installation of this equipment and to establish a baseline for new design guidelines that can be proposed for 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 on second and final reading is requested on July 14, 2020.

Funding Expected: Revenue ☐ Expenditure ☐ N/A ☒

Budgeted Item: Yes ☐ No ☐ N/A ☒

Amount: N/A

1295 Form Required? Yes ☐ No ☒

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

Supporting documents attached:

The Fee Schedule was approved by City Council February 25, 2020 which provide for the new fees related to the installation of Network Nodes and Wireless Facilities.

Additional Background Information

ROW Ordinance

Senate Bill 1004

Recommended Action

Approve the ordinance on second reading with the caption reading: An Ordinance repealing and replacing the Code of Ordinances of the City of Pflugerville, Texas, Chapter 96, "Streets and

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