

**ORDINANCE NO. 3457**



**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 70, “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES”, ARTICLE IV, “CONSTRUCTION IN PUBLIC RIGHTS-OF-WAY”, AND BY ADOPTING ARTICLE V, “NETWORK PROVIDERS”, TO PROVIDE REGULATIONS CONSISTENT WITH STATE LAW RELATED TO THE INSTALLATION OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY BY NETWORK PROVIDERS, AND AMENDING APPENDIX A, THE FEE SCHEDULE, TO PROVIDE FEES APPLICABLE TO THE INSTALLATION OF NETWORK NODES AND RELATED EQUIPMENT IN THE CITY RIGHT-OF-WAY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED \$2,000.00 PER VIOLATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council for the City of Farmers Branch finds that Chapter 284 of the Local Government Code, which goes into effect September 1<sup>st</sup>, 2017, provides regulations applicable to the installation of wireless network nodes and related equipment in the City’s rights-of-way by Network Providers; and

**WHEREAS**, the City Council for the City of Farmers Branch finds that it is necessary to amend its code of ordinances to adopt provisions that are consistent with Chapter 284 of the Local Government Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS:**

**SECTION 1.** That the Code of Ordinances of the City of Farmers Branch, Texas is amended by amending Appendix A, “Fee Schedule”, to read as follows:

**Appendix A – FEE SCHEDULE**

Network Provider Fees:

Small cell application fee (This fee shall not exceed and is capped by statutory limits)	\$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole
Small cell user fees (this fee shall not exceed and is capped by statutory limits)	\$250.00 annually for each network node; \$20.00 per year for city pole attachment

Transport Facility monthly user fee (This fee shall not exceed and is capped by statutory limits)	\$28 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul, until the time the network provider's payment to the City exceeds its monthly aggregate per-node compensation to the City"
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**SECTION 2.** That the Code of Ordinances of the City of Farmers Branch, Texas is amended by amending Chapter 70, "Streets, Sidewalks and Other Public Places", amending Article IV, "Construction in Public Rights-of-Way", amending Section 70-163, "Definitions", to read as follows:

**ARTICLE IV. CONSTRUCTION IN PUBLIC RIGHTS-OF-WAY**

...

**Sec. 70-163. Definitions.**

In this chapter,

*Agreement* means . . . .

*Network Node* means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

*Network Provider* means a wireless service provider, or 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, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

*Person* means . . . .

*Provider* means a person, including any certificated telecommunications utility and excluding Network Providers, as defined herein, that delivers telecommunications service within the city to person(s) by way of a network and that places facilities in, on or over the public rights-of-way. A provider does not include persons who are authorized by the city to occupy the public rights-of-way in specifically approved routes within the city, unless they also have a municipal consent under this chapter. To the extent allowed by law, provider also means a person that does not deliver telecommunications service within the city, but who uses, constructs or maintains facilities or transmission media within the public rights-of-way.

*Public Rights of Way* means . . . .

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.

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.

**Sec. 70-164. - Municipal agreement required.**

(a) Any person, except a certificated telecommunications provider or network provider, prior to placing, . . . .

**Sec. 70-166. – Permits.**

(a) Permit required. . . .

(c) Work exempt from permit.

(1) A permit shall not be required for the following:

. . . .

c. Repair, replacement, or maintenance of existing Network Nodes and related equipment, provided such equipment is installed in accordance with any necessary permit(s) issued in accordance with Article V of this Chapter, and pursuant to Chapter 284 of the Local Government Code and Article V, “Network Providers” of this Chapter.

(2) Exemption from the permit requirements of this chapter . . . .

**Sec. 70-183. - Indemnity.**

. . . .

(d) A person that is a certificated telecommunications provider as defined in Chapter 283 of the Texas Local Government Code, or a network provider as defined in Chapter 284 of the Local Government Code, as amended, shall provide to the city the indemnity provided in Section 283.057, Texas Local Government Code, as amended.

. . . .

**ARTICLE V. NETWORK PROVIDERS**

**Sec. 70-190. - Authority required/nonexclusive use**

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, including but not limited permission to use a utility pole or City service pole, prior to obtaining a permit from the City to use public right-of-way. The network provider's right to use and occupy the public right-of-way shall not be exclusive, and the city shall have the right to exercise its police powers and manage its public right-of-way, based on the Texas Local Gov't Code Chapter 284 and all other state or federal laws.

### **Sec. 70-191. - Transfer and notice**

A network provider shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of Network Provider's business within 30 days of such sale, transfer, merger or assignment. A Network Provider shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the Network Provider uses the right-of-way.

### **Sec. 70-192. - Fees**

(a) Exemptions. Network Providers are exempted from all fees, other than those specifically provided for in Subsection (b) of this Section.

#### **(b) Network Provider Fees**

(1) *Annual Network Node Rate.* Network Providers shall pay the City an annual Network Node Rate for each Location for which Network Provider has obtained Permit(s) for the installation of Network Nodes, regardless of whether or not a Network Provider installs Network Nodes in the Public Right-of-Way. The amount of the Annual Network Rate shall be set in City's Fee Schedule. The annual Network Node Public Right-of-Way Rate payment for the first year at any Location ("Initial Annual Network Node Payment") begins accruing when the permit is issued and is due 30 days after Network Provider obtains a Permit to install or collocate a Network Node at the Location. The Initial Annual Network Node Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date.

(2) *Subsequent Years Annual Network Node Rate Due Date.* The annual Network Node Public Right-of-Way Rate for every year after the Initial Annual Network Node Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

(3) *Annual Network Node Rate Adjustment.* The City may adjust the annual Network Node Public Right-of-Way Rate by an amount equal to one-half the annual change in the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. 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 municipality on or after the 60th day following that notice.

(4) *Annual Collocation on Service Pole Attachment fee.* Network Provider shall pay the City annually \$20 for each Network Node Permitted to be Collocated on a City Service Pole for

each Location for which Network Provider has entered into an agreement with the City to collocate a Network Node on a City Service Pole, regardless of whether or not a Network Provider collocates a Network Node on a Service Pole. This fee is due 30 days after Network Provider obtains a Permit to install a Network Node on the City Service Pole. The Initial Annual Collocation on Service Pole Attachment Fee Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date. The annual Collocation on Service Pole attachment fee for every year after the Initial Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

(5) *Monthly Transport Fee.* To the extent a Network Provider has Transport Facilities Permitted from the Network Nodes in the Public Right-of-Way it shall pay the City a monthly Transport Facilities fee on a quarterly basis, in the amount set in the City's Fee Schedule, as adopted in Appendix A of the Code of Ordinances, which begins accruing when the permit is issued. This Transport Facility fee is in addition to any annual Network Node Public Right-of-Way Rate payment required by Ch. 284, Section 284.053

(6) *Application and Permit Fees.* Network provider shall pay the City the application and permit fees set forth in the City's Master Fee Schedule contemporaneously with the submittal of the application for the permits.

#### **Sec. 70-193. - Indemnity**

A Network Provider shall indemnify the city as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended.

#### **Sec. 70-194. - Compliance with Design Manual**

A network provider shall comply with the city's Design Manual for the Installation of Network Nodes and Node Support Poles, as amended. Any applications submitted for installation of Network Nodes, Node Support Poles and related equipment, the plans and specifications of which do not comply with the Design Manual, will not be approved.

#### **Sec. 70-195. - Certificates of Operation**

As part of the application process for the installation of network nodes, the Network Provider must certify that the proposed network node will be placed into active commercial service by or for a network provider no later than the 60<sup>th</sup> day after the date the construction and final testing of the network node is completed.

An updated certification of active service must be submitted annually, by no later than December 31<sup>st</sup>, with or prior to payment of the applicable annual fee(s).

If the Network Provider is not in active commercial service for a period in excess of sixty (60) consecutive days, the equipment will be deemed abandoned and the permit will be revoked. The network provider will be required, within ninety (90) days from notification from the City, to remove the equipment at the network provider's sole expense.

**SECTION 3.** That all provisions of the ordinances of the City of Farmers Branch in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4.** That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 6.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Farmers Branch, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**APPROVED:**

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**Robert C. Dye, Mayor**

**ATTEST:**

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**Amy Piukana, City Secretary**

**APPROVED AS TO FORM:**



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**CITY ATTORNEY**

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