

**ORDINANCE NO. 2229**

**AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 106, "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", OF THE CITY OF BRYAN CODE OF ORDINANCES BY AMENDING ARTICLE V "PUBLIC RIGHTS-OF-WAY" TO RELOCATE AND AMEND "SPECIAL USE LICENSE" PROVISIONS OF CITY CODE PREVIOUSLY CODIFIED IN CHAPTER 62 AND TO AMEND CERTAIN SECTIONS AND TO ADD NEW SECTIONS, BY AMENDING ARTICLE III "SIDEWALKS" BY REPEALING CERTAIN SECTIONS, AND BY REPEALING ARTICLE IV "CONSTRUCTION" IN ORDER TO INCORPORATE PROVISIONS NECESSARY TO IMPLEMENT S.B.1004 OF THE 85<sup>TH</sup> REGULAR SESSION OF THE TEXAS LEGISLATURE PERTAINING TO THE DEPLOYMENT OF NETWORK NODES IN THE PUBLIC RIGHTS-OF-WAY AND AUTHORIZING CERTAIN FEES, AND DELEGATING TO THE CITY ENGINEER AUTHORITY TO ESTABLISH CERTAIN UNIFORM STANDARDS FOR THE SITING, DESIGN, PERMITTING, AND MAINTENANCE OF WIRELESS NETWORK NODES, NODE SUPPORT POLES, AND RELATED FACILITIES, AND PROVIDING FOR RECOVERY OF COSTS AND FEES FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY AND FOR USE OF CERTAIN CITY ASSETS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS**

**WHEREAS**, the 85<sup>th</sup> Texas Legislature in its Regular Session enacted S.B.1004, pertaining to the deployment of "Network Nodes" and related facilities in the Public Rights-of-Way, including the Public Rights-of-Way within the City; and

**WHEREAS**, S.B.1004 places requirements upon the City pertaining to permitting, regulation, and fees that can be charged for applications and Public Right-of-Way use for such facilities; and

**WHEREAS**, "Special Use Licenses" concern the deployment of certain facilities in the Public Rights-of-Way of the City, and therefore, City Code provisions relating to their deployment should be placed within Chapter 106, City Code; and

**WHEREAS**, the City Council has determined that reorganization and enhancement of Chapter 106, City Code's provisions relating to installation of various improvements in the Public Rights-of-Way of the City are appropriate; and

**WHEREAS**, the City Council finds that the proposed amendments are reasonable and necessary in order bring the City's right-of-way regulations into compliance with the mandate imposed upon the City by the Texas Legislature pursuant to S.B.1004, and are, therefore, in the public interest; and

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

**SECTION 1**

The findings and recitations set out in the recitals to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

## **SECTION 2**

As set forth in the attached and incorporated Exhibit A:

1. Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article III, SIDEWALKS, Sections 106-97, 106-98, and 106-99 are REPEALED and RECODIFIED at new Sections 106-173, 106-174, and 106-175, as adopted below; and
2. Chapter 106 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article IV, CONSTRUCTION, is REPEALED, and Article IV is RESERVED; and
3. Chapter 106, - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article V, PUBLIC RIGHTS OF WAY, Section 106-161, is AMENDED; and
4. Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article V, PUBLIC RIGHTS-OF-WAY, is AMENDED to add new Sections 106-170 to 106-176, 106-178, and 106-181, and to AMEND Section 106-180; and
5. Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article V, PUBLIC RIGHTS-OF-WAY, is AMENDED to add new Section 106-185.

## **SECTION 3**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

## **SECTION 4**

The Code of the City of Bryan, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

## **SECTION 5**

If any section, paragraph, sentence, clause, phrase, or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

## **SECTION 6**

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, et seq., of the Texas Government Code, and that advance public notice of the time, place, and purpose of said meetings was given, pursuant to all applicable law.

## **SECTION 7**

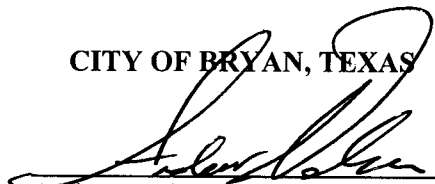
That this ordinance shall take effect immediately upon second and final reading.

PRESENTED AND GIVEN first reading the 22nd day of August, 2017 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 28<sup>th</sup> day of August, 2017, by a vote of \_\_\_\_ ayes and \_\_\_\_ nays at a regular meeting of the City Council of the City of Bryan, Texas.

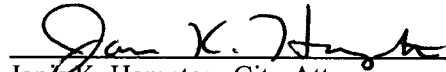
ATTEST:

  
Mary Lynne Stratta, City Secretary

CITY OF BRYAN, TEXAS

  
Andrew Nelson, Mayor

APPROVED AS TO FORM:

  
Janis K. Hampton, City Attorney

## EXHIBIT "A"

1. Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article III, SIDEWALKS, Sections 106-97, 106-98, and 106-99 are REPEALED and RECODIFIED at new Sections 106-173, 106-174, and 106-175, as adopted below; and

2. Chapter 106, STREETS, SIDEWALKS AND OTHER PUBLIC PLACE, Article IV, CONSTRUCTION, is REPEALED, and Article IV is RESERVED.

3. Chapter 106, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article V, PUBLIC RIGHTS OF WAY, Section 106-161, is AMENDED to read as follows:

Sec. 106-161. - Definitions.

The following words, terms and phrases, when used in this ~~article~~Code, shall have the meanings ascribed to them in this section, except where the context or an alternative definition specific to the chapter in which it appears clearly indicates a different meaning:

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

Applicable Codes means:

(1) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including without limitation the National Electric Code and the National Electric Safety Code; and

(2) Local amendments to those codes to the extent not inconsistent with this chapter.

Bryan Texas Utilities or BTU shall mean the City of Bryan, Texas, owned electric service provider.

City shall mean the City of Bryan, Texas.

Chapter 284 refers to Chapter 284, Local Government Code.

Collocate and Collocation mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in the Public Rights-of-Way on or adjacent to a Pole.

Commercial Message shall mean a message placed or caused to be placed before the public by a person or business enterprise directly involved in the manufacture or sale of the products, property, accommodations, services, attractions, or activities or possibly those things which are the subject of the message and that:

(1) Refers to the offer for sale or existence for sale of products, property, accommodations, services, attractions, or activities; or

(2) Attracts attention to a business or to products, property, accommodations, services, attractions, or activities that are offered or exist for sale or for hire.

Concealment Elements means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Service facility, including without limitation a Wireless Telecommunications Facility, a Network Node, or a Node Support Pole, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.

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 City Code.

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

*Flag* shall mean a piece of fabric that contains colors, patterns, symbols, or words that convey a noncommercial message.

Franchise Fee refers to the fees paid by cable or video service providers as holders of state-issued certificates of franchise authority pursuant to Chapter 66, Utilities Code.

*Government Signs* shall mean a sign placed at the direction of a duly authorized officer, employee, department or agency of the government of the United States, the state, or a political subdivision of the state, including but not limited to, directional, traffic safety and public information, or school zone sign.

*Handheld Sign* shall mean a sign that is held by a person in such a manner that neither the sign nor any object that provide support of the sign touches the ground.

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.

Macro Tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103, Local Government Code, and that supports or is capable of supporting antennas.

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 Fee refers to the fees paid by certificated telecommunications providers, as defined in and provided by Chapter 283, Local Government Code.

Municipally Owned Utility Pole means a utility pole owned or operated by BTU.

Municipal Park means an area that is zoned or otherwise designated by City Code or regulation 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:

(1) includes:

(a) \_\_\_\_\_ equipment associated with wireless communications;

(b) a radio transceiver, an Antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(c) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(2) does not include:

(a) \_\_\_\_\_ an electric generator;

(b) \_\_\_\_\_ a Pole; or

(c) \_\_\_\_\_ a Macro Tower.

Network Provider means:

- (1) a Wireless Service Provider; or
- (2) a person that does not provide Wireless Service and that is not an electric utility but builds or installs on behalf of a Wireless Service Provider;

- (a) Network Nodes; or

- (b) 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.

Noncommercial Mmessage shall mean any message that is not a commercial message.

Non-decorative Streetlight Pole shall mean a BTU-owned streetlight pole that is not a Decorative Pole.

Permit means a written authorization for the use of the Public Right-of-Way or collocation on a service pole required from a municipality before a Network Provider may perform an action or initiate, continue, or complete a project over which the City has police power authority.

Permitted Eevent shall mean a street closing event as defined in this section.

Pole means a Service Pole, Municipally 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.

Projecting Ssign shall mean a sign, other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign.

Public Pproperty shall mean property owned or leased by the federal government, the state, or any political subdivision of the state, including the City.

Public right-of-way shall mean the entire width of the area between private property lines, dedicated for public use as a street, roadway, alley, bridge, thoroughfare, improved or unimproved pedestrian way or sidewalk. Public Rights-of-Way means the areas 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:

- (1) A private easement; or
- (2) The airwaves above a Public Right-of-Way with regard to wireless telecommunications.

Public Right-of-Way Management Ordinance means an ordinance that complies with Subchapter C, Chapter 284, Utilities Code, and specifically, Chapter 106, Bryan City Code.

Public Right-of-Way Rate means an annual rental charge paid by a Network Provider to the City related to the construction, maintenance, or operation of Network Nodes within the Public Rights-of-Way in the City.

Rubbish shall mean garbage, trash, debris, uncultivated brush, and litter.

Service Pole means a Pole, other than a Municipally Owned Utility Pole, owned or operated by the City and located in a Public Right-of-Way, including:

- (1) A Pole that supports traffic control functions;
- (2) A structure for signage;
- (3) A Pole that supports lighting, other than a decorative pole; and

(4) A Pole or similar structure owned or operated by the City and supporting only Network Nodes.

*Sign* shall mean any device, display, flag, plaque, poster, design, painting, drawing or graphic that is intended or used to convey a message.

*Special Event* shall mean an event to be held within the City, that is of limited duration, and is likely to attract 100 or more visitors which has been permitted pursuant to section ~~106-19145-187~~ and shall include, without limitation, exhibitions, automobile races, sporting events, festival, air show, carnivals, circuses, revivals, tent sales, concerts, parades, runs, walks, races or motorcades.

*State Maintained Highway* shall mean a road or highway built, maintained, or repaired by the State of Texas, including without limitation Highway 6 (East Bypass) and frontage road, Highway 21 (San Jacinto), Highway 158 (William Joel Bryan), Highway 308 (South College from Sulphur Springs to College Station city limits), Highway 6 Business (Texas Avenue), Highway 974 (Tabor Road from Wilkes Street east to city limits), Highway 1179 (Villa Maria from Briarcrest to west city limits and Briarcrest to east city limits), Highway 1687 (Sandy Point Road) and Highway 2818. Highway 6 (Earl Rudder Freeway) and frontage road, Highway 21 (San Jacinto), Farm to Market Road 158 (William Joel Bryan), Spur 308 (South College from Sulphur Springs to College Station City limits), Highway 6 Business (Texas Avenue), Farm to Market 974 (Tabor Road from Wilkes Street east to City limits), Farm to Market 1179 (Villa Maria from Briarcrest to west City limits and Briarcrest to east City limits), Highway 47 (from south City limits to Highway 21), Farm to Market 1687 (Sandy Point Road), Farm to Market 1688 (Leonard Road from Farm to Market 2818 to Highway 47, and Farm to Market 2818 (Harvey Mitchell Parkway from south City limits to Highway 6).

*Street Closing Event* shall mean any activity, including but not limited to special events which requires the closing of all traffic lanes of any public street, and which requires rerouting of normal or usual traffic flow and which has been permitted pursuant to section ~~106-19145-187~~ of the Bryan City Code.

*Subdivision Development Wayfinding Signs* shall mean off-site directional signs placed in the ~~Public Rights-of-Way~~ along arterial and major collector roadways within a planned development type residential subdivision and used to guide the public to amenities and/or facilities located within the subdivision, and which signs are installed and maintained by the developer and/or Home Owners Association and which require a special use license.

*Temporary Sign* shall mean any sign constructed of cloth, canvas, light fabric, cardboard, wallboard, plastic, metal or other light materials, not to exceed six square feet in size and not intended for long-term use.

*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.

Utility Pole means a Pole that provides:

- (1) Electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (2) Services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

*Weeds and Grass* shall mean weeds and/or grass, or other uncultivated plants on any premises or right-of-way, which grown in such rank profusion as to harbor reptiles or rodents, or create a fire hazard; and weeds and/or grass or, other uncultivated plants on any premises which are permitted to, or do, attain a height greater than 12 inches on the average.

Wireless Installment License Agreement means an agreement between the City and a Network Provider providing the terms and conditions of access to the Public Rights-of-Way and to City Service Poles.

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.

See also section 130-35(a).

4. Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article V, PUBLIC RIGHTS-OF-WAY, is AMENDED to add new Sections 106-170 to 106-176, 106-178, and 106-181, and to AMEND Section 106-180:

Sec. 106-170. - Right-of-Way Work Permit; Application.

(a) Installations Without Permit Unlawful. It is unlawful for any person to do any work within a Public Right-of-Way without first obtaining a right-of-way work permit from the City (a “Right-of-Way Work Permit”). A Right-of-Way Work Permit is required for the construction, maintenance, or repair of streets, sidewalks, lawful encroachments, wireless facilities, and utilities.

(b) Application Required. Any person seeking to undertake work within City Public Rights-of-Way shall submit a City-approved Right-of-Way Work Permit Application (an “Application”) with the information required under this Chapter and the Design Manual for Right-of-Way Installations applicable to the activity to be undertaken.

(c) Scope of Application. Each Application shall contain the required information and submittals for a single project; provided, however, that an Application for installation or collocation of Network Nodes, as defined herein, may contain a request for permits for up to 30 Network Nodes.

(d) Contents of Application. Each Application shall contain, consistent with the requirements of the Design Manual for Right-of-Way Installations and the further provisions of this Code, without limitation:

(1) All applicable construction and engineering drawings, including without limitation a professionally engineered traffic control plan, where applicable;

(2) Information confirming that the applicant’s project conforms to (i) all applicable municipal codes and design specifications and state and national codes and regulations, including without limitation applicable regulations of the Federal Communications Commission; and (ii) the City’s Design Manual for Right-of-Way Installations.

(3) A proposed completion date and a commitment to place the installation in service not later than 60 days after completion and final testing, where applicable.

(e) No Permit Required in Limited Circumstances. The following do not require a permit:

(1) Any work performed by the City or under the City’s supervision, including without limitation work performed by Bryan Texas Utilities; or

(2) Any emergency threatening life, safety, or property, provided that the City is notified of the emergency situation as soon as possible;

(3) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way;

(4) Replacing or upgrading a Network Node or Pole with a Network 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

(5) The installation, placement, maintenance, operation, or replacement of a Micro Network Node that is strung on cables between existing Poles or Node Support Poles, in compliance with Applicable Codes.



For purposes of this subsection,

(1) A Network Node or Pole is considered to be "substantially similar" if:

(i) The new or upgraded Network Node, including the antenna or other equipment element, will not be more than 10 percent (10%) larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by the Design Manual for Right-of-Way Installations; and

(ii) The new or upgraded pole will not be more than 10 percent (10%) higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by Design Manual for Right-of-Way Installations;

(2) The replacement or upgrade does not include replacement of an existing Node Support Pole; and

(3) The replacement or upgrade does not defeat existing Concealment Elements of a Node Support Pole.

(f) City Determination of Substantial Similarity.

(1) The City will make the determination of whether a Network Node or Node Support Pole is substantially similar by measuring the dimensions of the Network Node or Node Support Pole as originally permitted and comparing them to the information the Network Provider submits in support of a claim that the replacement facility is substantially similar to the existing permitted facility.

(2) A Network Provider desiring to replace or upgrade a Network Node or Pole with a Network Node or Pole that it contends is substantially similar in size or smaller and does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way, as provided in subsection (e) hereof, must present the City Engineer or his designee with information sufficient to establish that an Application is not required because the installation meets the requirements of subsection (e) pursuant to subsection (g) hereof.

(g) Notice Required Without Permit. Notwithstanding subsection (e):

(1) A Network Provider must provide not less than ten (10) days advance notice to the City Engineer or his or her designee of work allowed by that subsection without a new permit, and such notice shall include:

(i) In all instances, including proposed installation, placement, maintenance, operation, or replacement of a Micro Network Node that is strung on cables between existing poles of network support poles, information sufficient to show that the activity will not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way; and

(ii) In instances in which the contemplated activity consists of replacement or upgrade of a Network Node or pole, information sufficient to demonstrate that the replacement Network Node or Pole is substantially similar to the existing permitted Network Node or Pole;

(2) A Network Provider may replace or upgrade a Pole only with the approval of the Pole's owner, including the City, where applicable; and

(3) The replacement or upgrade may not in any event exceed the limitations prescribed by Design Manual for Right-of-Way Installations without the City's approval in accordance with Subsection (i) hereof.

(h) Permit Form. Where applicable, a completed Application for a permit to perform work in the Public Rights-of-Way must be submitted to the City on an approved form, accompanied by the applicable fee, set forth in Appendix A to this Article, unless state law or an existing agreement or franchise with the City provides an exemption from the fee. The Application may require information, including

plans and specifications, that the City determines is reasonably necessary to administer this ordinance and to protect the public and public property. By submitting the Application and any supporting documentation to the City, the applicant is asserting that the information contained therein is accurate and correct.

(i) Exceptions to Size Limitations. Subject to the further limitations set forth herein pertaining to the application for, issuance of, and terms of permits for the installation of a wireless Network Node and related facilities, a Network Provider may construct, modify, or maintain in a Public Right-of-Way a Network Node or Node Support Pole that exceeds the height or distance limitations prescribed by this chapter only if the City by resolution approves the construction, modification, or maintenance subject to all applicable zoning or land use regulations and Applicable Codes after showing of good cause.

Sec. 106-171. – Municipal Review of Applications for Facilities In or Use of the Public Rights-of-Way

(a) Process and Timing. The City will accept and review Applications for permits to place facilities in or to otherwise use the Public Rights-of-Way within the City as follows:

(1) No later than the 30<sup>th</sup> day after the City receives an Application under this section, the City shall determine whether the Application is complete or deficient and notify the applicant of that determination in writing; provided, however, that the City will notify an Applicant seeking to install a Transport Facility serving an identified Network Node that its Application is complete or deficient not later than the 10<sup>th</sup> day after receipt. If the City determines that the Application is not complete, it will specifically identify the missing information.

(2) The City will approve an Application under this section that does not require zoning or land use approval unless the Application or the corresponding work to be performed under the permit does not comply with Applicable Codes, City Code, rules, or regulations, including without limitation, the Design Manual for Right-of-Way Installations.

(3) The City will use reasonable efforts to approve or deny an Application for installation of facilities or equipment in the Public Rights-of-Way not later than the 150<sup>th</sup> day after the date the City receives the complete Application; provided, however, that the City will approve or deny an Application for installation within the Public Rights-of-Way of the City:

(i) For a Node Support Pole, not later than the 150<sup>th</sup> day after the date the City receives the complete Application;

(ii) For a Network Node, not later than the 60<sup>th</sup> day after the date the City receives the complete Application; and

(iii) For a Transport Facility serving an identified Network Node, not later than the 21<sup>st</sup> day after the date the City receives the complete Application.

(b) Deemed Approval for Certain Applications. An Application for a permit for installation of a Node Support Pole, Network Node, or Transport Facility in the Public Rights-of-Way under this Chapter shall be deemed approved if the City does not approve or deny the Application on or before the applicable date for approval or denial prescribed by subsections (a)(3)(i), (ii), or (iii).

(c) Notice of Reasons for Denial. If the City denies a complete Application, it will provide the Applicant with written notice of the basis for the denial, including the specific Applicable Code provisions; municipal rules or regulations; Design Manual for Right-of-Way Installations; or other law on which the denial was based. The City will send the notice of the basis of the denial by electronic mail to the Applicant on or before the date the City denies the Application.

(d) Right to Cure Deficiencies; Scope of Review. Not later than the 30<sup>th</sup> day after the date the City denies the Application, the applicant may cure the deficiencies identified in the denial documentation and resubmit the Application without paying an additional application fee, other than a fee for the City's

actual costs incurred to process the resubmitted Application. The City's review of the revised Application is limited to the deficiencies cited in the denial documentation.

(e) Time for Review After Resubmission. The City will approve or deny the revised complete Application after a denial not later than the 90th day after the date the City receives the complete revised Application.

(f) Permit Conditioned on Diligent Installation. The City may condition the issuance of a permit for installation of facilities or equipment in the rights-of-way upon (1) the applicant's initiation of authorized construction activities within six (6) months after approval under this section; and (2) the applicant's diligent completion of construction activities and, where applicable, activation of any Network Node. The Applicant, upon demonstrating good cause for any delay beyond six (6) months for commencement of construction or for continuous and diligent construction to completion, may apply to the City for an extension of the time limits set forth in this subsection not to exceed six (6) additional months.

(g) Notice of Impending Commencement of Work. Notwithstanding anything in this section to the contrary, an applicant holding an approved permit shall notify the City Engineer of impending commencement of work in the Public Rights-of-Way as provided in Section 106-173.

#### Sec. 106-172. – Fees for Processing Applications

The following fees apply to the processing of applications for permits to conduct activities in the Public Rights-of-Way:

(a) General Fees.

(1) \$100 – Type A Special (including but not limited to placing cranes, dumpsters, building materials, tree trimming);

(2) \$500 – Type B Utility Construction (buried or above ground utility construction);

(3) \$500 – Type C Utility Maintenance (routine maintenance of existing facilities);

(4) \$100 – Type D Residential Right of Way Construction (sidewalk, driveway repair, new driveway not associated with building permit); and

(5) \$200 – Type E Other (not covered by A-D permit types such as wide load, monitoring wells, detours, irrigation systems, etc.)

(b) Network Nodes, Node Support Poles, Transport Facilities, and Related Facilities. The following application fees apply to a proposed installation of one or more Network Nodes:

(1) \$500 per application covering up to five Network Nodes;

(2) \$250 for each additional Network Node per application beyond five; and

(3) \$1,000 per application for each pole.

(c) Special Use License Fee, \$250.

#### Sec. 106-173. - Utilities and other facilities in streets and alleys.

(a) Any person desiring to install any water meter, gas meter, light pole, power pole, telephone or telegraph pole, Service Pole, any water, gas, or sewer service lines, fiber optic cables, Network Nodes, Node Support Poles, or any other facilities in, above, or along the Public Rights-of-Way of any street or

alley in the City shall install the same in accordance with the standard specifications adopted by the City and on file in the office of the City Engineer.

(b) After the City has issued a permit under Section 106-170 for the installation of a facility in the Public Rights-of-Way, applicant shall provide the City Engineer with at least 48-hours' notice of intent to start installation or construction. Written approval of the City Engineer or his designee must be obtained prior to starting the work.

(c) This section shall not apply to the facilities of City-owned utilities, including without limitation Bryan Texas Utilities.

Sec. 106-174. – Franchise or other authorization required.

No person shall install or maintain any gas lines, gas meters, television cables, fiber optic cables, Wireless Telecommunications Facility, Network Nodes, Node Support Poles, or any other facilities in, above, or along the Public Rights-of-Way of any street or alley in the City without obtaining and holding a valid franchise or other authorization granted in accordance with the procedures set forth in the City Charter or applicable law. Such authorization may include: (a) a state issued certificate of franchise authority under Chapter 66, Utilities Code; (b) qualification as a certificated telecommunications provider (“CTP”), as that term is defined in Chapter 283, Local Government Code; or (c) qualification as a Network Provider as defined in Chapter 284, Local Government Code. This section shall not apply to the facilities of City-owned utilities.

Sec. 106-175. - Relocation of facilities required.

If the City Engineer deems it necessary to remove, alter, change, adapt, or conform the underground or overhead facilities of a Public Right-of-Way user in order to allow the City to widen, straighten, change the grade, or otherwise alter any street, alley or Public Right-of-Way or install or improve City-owned storm drains, water lines, sewer lines, or electric lines, such facilities shall be relocated at the expense of the facility owner.

(a) Except as provided by Subsection (b), a facility owner shall remove, relocate, or alter the location of its facility in a Public Right-of-Way not later than the 120th day after the City Engineer or his designee sends written notice.

(b) A facility owner shall remove, relocate, or alter a facility in a Public Right-of-Way by no later than the deadline assigned by the City Engineer or his designee:

(1) If the facility is located outside of the approved Public Right-of-Way assignment; or

(2) If the City Engineer determines the action is reasonably necessary to abate an obstruction that poses an unreasonable risk to public health, safety, or welfare.

(c) The facility owner shall promptly repair or replace at its sole expense any damage to the Public Rights-of-Way or City real or personal property caused in the removal, relocation, or alteration of its facilities in accordance with this section.

(d) If a facility owner fails to remove, relocate, or alter a facility by the deadline described in Subsections (a) or (b), the City may remove or relocate the facility at the facility owner's sole expense. The facility owner shall promptly pay all costs of removal, relocation, or alteration the City incurs, including consequential damages that result from locating a facility outside the assigned area.

(e) A facilities owner shall reimburse the City the costs of removal, relocation, or alteration and the costs of repair or replacement for any damages to the Public Rights-of-Way or City real or personal property provided in this Section within 30 days of written notice of or demand for the amounts due.

(f) This section does not prevent a facilities owner from recovering the cost of relocating or removing a facility in the Public Rights-of-Way from a non-governmental third party that initiates a request for relocation or removal, or from a governmental entity that has authorized payment for relocation or removal costs.

Sec. 106-176. – Design Manual for Right-of-Way Installations.

(a) Design Manual for Right-of-Way Installations. The City Engineer shall prepare, adopt, and update as needed a proposed Design Manual for Right-of-Way Installations consistent with the City Code and applicable law pursuant to the procedures of Section 2-673.

(b) The City Engineer, in conjunction with other City departments performing activities in or having jurisdiction over the Public Rights-of-Way within the City, may from time to time add to, delete from, or otherwise revise the Design Manual for Right-of-Way Installations, provided that the revision:

(1) Does not conflict with federal or state law or City Code;

(2) Is for the purpose of providing detailed or technical specifications, requirements, or procedures applicable to the matters regulated under this Chapter; and

(3) Is approved by the City Manager or his designee.

(d) A person using or installing any equipment or facility in the Public Rights-of-Way of the City shall comply with any applicable provisions of the Design Manual for Right-of-Way Installations as a condition of approval of any Application, permit, or other approval required under this chapter, the Design Manual for Right-of-Way Installations, or any other chapter of the Code for which the Design Manual for Right-of-Way Installations provides detailed or technical specifications, requirements, or procedures.

Sec. 106-177. – Reserved.

Sec. 106-178. – Adoption and Application of Pole Attachment Standards.

(a) The City Engineer or his designee shall prepare, adopt, and update as needed Pole Attachment Standards consistent with the City Code and applicable law pursuant to the procedures of Section 2-673. The Pole Attachment Standards shall be incorporated in and become essential terms of the Wireless Installment License Agreement.

(b) The City Engineer or his designee, in conjunction with other City departments performing activities in or having jurisdiction over the Public Rights-of-Way within the City, may from time to time add to, delete from, or otherwise revise the Pole Attachment Standards, provided that the revision:

(1) Does not conflict with federal or state law or City Code;

(2) Is for the purpose of providing detailed or technical specifications, requirements, or procedures applicable to the matters regulated under this Chapter and pursuant to the Wireless Installation License Agreement; and

(3) Is approved by the City Manager or his designee.

(d) A person who is a party to a Wireless Installation License Agreement and seeks to use the Public Rights-of-Way of the City to install Network Nodes or transport facilities in whole or in part using City Service Poles shall comply with any applicable provisions of the Pole Attachment Standards.

Sec. 106-179. – Reserved.

Sec. 106-180. – Wireless Communications Providers Access to City Rights-of-Way and Service Poles; Agreement

(a) For purposes of this section, the following definitions set forth in Sec. 106-161 apply:

- 1) "City owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right of way.
- 2) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of wireless communications facilities in a public right of way on or adjacent to an existing pole.
- 3) "Distributed Antenna Systems" or "DAS" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, equipment associated with wireless communications, and a radio transceiver, an antenna, a battery only backup power supply, and comparable equipment, regardless of technological configuration.
- 4) "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; or
  - {C} a pole that supports lighting.
- 5) "Utility pole" means a pole or similar structure that provides:
  - {A} electric distribution with a voltage rating of not more than 34.5 kilovolts;
  - {B} services of a telecommunications provider, as defined by Section 51.002, Utilities Code; or
  - {C} a pole owned by a wireless communications service provider for the purpose of supporting an antenna, distributed antenna systems, or small cell facilities.
- 6) "Wireless communications facilities" means an antenna, distributed antenna systems, transportation facility, a utility pole, or other infrastructure related to the provision of wireless service.
- 7) "Wireless communications service provider" means:
  - {A} a person or entity that provides wireless communications service to the public;  
or
  - {B} a person or entity that owns or operates wireless communications facilities for another person to provide wireless communications service to the public.
- 8) "Wireless communications 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.~~

(ab) ~~A Wireless communications service Network Provider may not~~ neither install, operate, maintain, repair, nor lease any Network Node, Node Support Pole, or Transport Facility ~~Wireless communications facilities within a City Public Rights-of-Way nor collocate or attach either a Network Node on or attach a Transport Facility to a City Service Pole~~ without duly executing a master Wireless Installation License Agreement with the City.

(b) The City Manager shall promulgate a form master Wireless Installation License Agreement that each Network Provider is required to execute as a condition of (1) using the Public Rights-of-Way within the City for the installation of a Network Node, a Node Support Pole, or a Transport Facility; and (2) using City Service Poles for Network Node or Transport Facility installations.

(c) The master Wireless Installation License Agreement ~~license agreement~~ will include insurance requirements, indemnification, and any fee authorized by state law. The master Wireless Installation License Agreement ~~license agreement~~ shall incorporate (expressly or by reference) design specifications, promulgated by the City Engineer, including without limitation the requirements of the Design Manual for Right-of-Way Installations, related to the construction, installation, and operation of facilities for the provision of wireless communications or related facilities. The purpose of the design specification is so that the facilities do not:

- (1) obstruct, impede, or hinder the usual use and operation of the Public Rights-of-Way;
- (2) pose a risk or threat to public safety;
- (3) obstruct, impede, or hinder the lawful use of Public Rights-of-Way by other utility providers; or
- (4) violate or conflict with state or federal law or City ordinances or regulations.

(ed) ~~Wireless communications service~~ Pursuant to the terms of the Wireless Installation License Agreement, a Network Provider (1) shall locate its Network Nodes, Node Support Poles, or Transport Facilities in Public Rights-of-Way in accordance with City specifications; (2) shall collocate its their facilities on existing utility poles in accordance with the priorities set forth in the Design Manual for Right-of-Way Installations whenever possible; and, (3) where not attaching to a City Service Pole but to a Pole owned by a utility, must have entered into a utility pole attachment agreement with the owner or operator of the Pole (unless the Network Provider is they are the owner, or an affiliate, or a subsidiary of the Pole owner); and (3) Wireless communications service provider s may collocate their its Network Nodes or Transport Facilities facilities on City-owned Sservice Ppoles, when reasonably necessary and in accordance with the requirements of the Wireless Installation License Agreement, the Design Manual for Right-of-Way Installations, and the City Pole Attachment Standards but must first have entered into a service pole attachment agreement with the City.

(e) A Network Provider shall follow the requirements for installations of Network Nodes, Node Support Poles, and associated Transport Facilities set forth in the Wireless Installation License Agreement, the Design Manual for Right-of-Way Installations, and the City Pole Attachment Standards.

(f) Subject to the further provisions of City Code, the Wireless Installation License Agreement shall provide the following:

(1) The Network Provider shall agree to conform its technical and aesthetic design practices for collocated Network Nodes with all Applicable Codes and regulations, including without limitation (i) City zoning and historical district aesthetic or design requirements; and (ii) all Applicable Codes; (iii) the Design Manual for Right-of-Way Installations; and (iv) the Pole Attachment Standards.

(2) The collocating Network Provider shall pay the City \$20 per year per Network Node collocated on a City Service Pole (“Service Pole Rate”).

(3) The Network Provider shall pay on an annual basis \$250 per Network Node installed within the Public Rights-of-Way of the City (the “Network Node Rate”). The Network Node Rate shall increase each year by one-half of the annual change in the consumer price index as set forth in Section 284.054, Local Government Code. The City will provide each Network Provider notice of the increased Network Node Rate by October 31 of each year.

(4) The Network Provider shall pay the required compensation to the City on or before December 31 of each year for (i) each collocated Network Node occupying a City Service Pole for all or any part of the preceding twelve (12) months, and (ii) each Network Node installed or in place at any time in the calendar year.

(g) A Network Provider installing a Network Node may:

(1) Self-provide transport service to the Network Node, provided that (i) it has a permit to install facilities in the Public Rights-of-Way for such services; and (ii) it pays (A) an amount equal to \$28 per Network Node per month specifically for such Transport Facilities; or (B) Municipal Fees for such Transport Facilities that equal or exceed \$28 per month; or

(2) Obtain transport service to the Network Node from a third-party provider, provided that the provider of transport service pays the City Municipal Fees pursuant to (i) Chapter 283, Local Government Code, or (ii) franchise agreement with the City, that equal or exceed \$28 per month per Network Node for which the transport service is provided.

(h) The City Manager is authorized to negotiate and execute on behalf of the City, a Wireless Installation License Agreement authorized under this section in form to be approved by the City Attorney.

#### Sec. 106-181. – Supplemental Application Requirements.

In addition to the requirements of Section 106-170, an Application for installation of one or more proposed Network Nodes, Node Support Poles, Transport Facilities, or related facilities must include without limitation all requirements for such applications set forth in the Design Manual for Right-of-Way Installations.

Sec. 106-182 to 106-184 Reserved.

5. Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, Article V, PUBLIC RIGHTS-OF-WAY, is AMENDED to add new Section 106-185:

#### Sec. 106-185. – Special Use License.

The City may grant a special use license for use of public right-of-way. The City, however, may cancel the license after the grantee has been given 90 days' notice. This provision shall not apply to right-of-way which is designated as county, state or federal highway or road.

(a) Types of uses. Any one or more of the following activities, improvements, facilities or uses on public right-of-way may be granted a special use license:

(1) Aerial uses.

a. Temporary banners placed over streets; and

b. Other overhead encroachments not specified herein.



(2) Other uses.

- a. Supportive or decorative columns, arches or other structural or decorative features;
- b. Neighborhood gateway signs and landscaping;
- c. Other surface encroachments not specified herein; and
- d. Miscellaneous subsurface uses.

(3) Additional uses permitted in downtown.

- a. An awning, canopy, marquee, or sign;
- b. A sidewalk cafe containing removable chairs, planters or related materials.

(b) Exceptions. Any use not covered under this subsection shall require a special use license to utilize the public right-of-way. The following activities, improvements, facilities or uses on public right-of-way shall not require a special use license as herein provided:

- (1) City licensed or owned and maintained transit bus shelters and other related amenities for the convenience of the public;
- (2) Trees and decorative landscaping, including landscaping, lighting, watering systems, and other appurtenances for the maintenance thereof, provided however, that when such landscaping is proposed on a public street having a right-of-way width of 60 feet or more, a landscaping plan shall be submitted to and approved by the site development review committee prior to its installation; and
- (3) Uses such as but not limited to, newspaper racks, trash containers, and public utility facilities where the City has granted a franchise or lease permitting such use of the public right-of-way.

(c) Application. The following shall be required of all applicants requesting a special use license:

- (1) An application form completed and signed by the applicant and filed with the planning and development services department. The application shall set forth the following information:
  - a. The name, address and telephone number of the person or group seeking to use the public right-of-way;
  - b. The date the applicant proposes to use a public right-of-way;
  - c. A description of the proposed use of the public right-of-way; and
  - d. The nonrefundable filing fee.
- (2) Fifteen copies and digital copy in PDF format of a plan of the area being requested for a special use license, showing all adjacent lot, easement, or other improvements contained on the public right-of-way and any and all improvements to be placed on such by the applicant; and
- (3) A transmittal letter including specific information, special circumstances or conditions which apply to the request.

(d) Procedure.

- (1) The submitted application and materials will be considered by the site development review committee, which will approve or deny the request.

(2) In the event that the property on which the license is granted changes ownership, no certificate of occupancy may be granted until a new special use license is granted to the new owner or until the use is removed.

(e) *Indemnification and insurance requirements.*

(1) As a condition of the special use license, the licensee shall agree to indemnify, defend and hold harmless the City, its officers, agents, and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with licensee's use of public right-of-way.

(2) No special use license shall be granted unless the licensee files with the planning and development services department a certificate of liability insurance as hereinafter set forth. If the policy is not kept in full force and effect throughout the term of the license, the special use license shall automatically become void and the encroachment must be removed at that time.

(3) The insurance policy shall be issued by an insurance company authorized to do business in the state and shall be reviewed by the City Attorney. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents or employees and the insurance shall meet or exceed the following minimum amounts: Liability insurance with a minimum \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage. The minimum amounts of insurance coverage may be increased by the City when it is in the best interest of the public.

(4) The policy of insurance shall name both the licensee and the City as insurers to the full amount of the policy limits. Such policy shall inure to the benefit of a person in whose favor a judgment may be rendered, but may contain a provision that suit against the insurer may not be brought until the licensee has failed to pay the final judgment of a court of competent jurisdiction against him or her.

(5) The City shall be given not less than thirty (30) days' notice of cancellation of the policy, except in the case of non-payment, then not less than ten (10) days is required. The licensee shall not surrender or release such policy without filing in lieu thereof another policy complying with the requirements of the section, or surrendering the special use license.

(6) Neither the City nor any officer or employee thereof shall be liable for the financial responsibility of any insurer, or in any manner become liable for any claim, act, or omission, relating to the licensee's use of the public right-of-way.