

AGENDA



Recommendation for Council Action

Austin City Council	Item ID	72906	Agenda Number	45.
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Meeting Date:	8/17/2017	Department:	Telecommunications and Reg Affairs
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Subject

Approve an ordinance amending chapters 14-11 and 15-7 and repealing Chapter 15-8 of the City Code related to right of way permitting and City-owned pole attachment agreements for placement of non-City facilities in City right of way and on City-owned poles; declaring an emergency.

Amount and Source of Funding

Fiscal Note

Purchasing Language:	
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Prior Council Action:	
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For More Information:	Rondella M. Hawkins, TARA Officer, 512-974-2422
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Council Committee, Boards and Commission Action:	
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MBE / WBE:	
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Related Items:	
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Additional Backup Information

The 85th Texas Legislature adopted new Chapter 284 of the Texas Local Government Code, effective September 1, 2017. The new state law obligates Texas municipalities to permit the use of municipal right of way and municipal poles (includes, traffic signal poles, non-decorative light poles, sign poles, and City-owned electric distribution poles) for placement of wireless network equipment and poles for use by wireless network providers. The new state law restricts municipal authority to police power based public health, safety, and welfare, with a few allowances for municipal discretion over design and concealment elements as well as discretion on terms for attaching to municipally-owned electric distribution poles. The new state law also caps municipal fees for processing permits and collecting compensation for use of City right of way and poles. Further, the new law places strict time limits on considering permits that if not processed by the time a “shot clock” runs out are deemed approved. Requests to attach to municipally-owned electric distribution poles are excluded from the permit fee cap and review shot clock.

The new state law allows some municipal discretion over design by requiring network facilities to conform to municipal design manuals and discretion over design and concealment, dependent on recognition by the municipality

of design districts and historic districts. Further, the new state law allows some municipal discretion over whether a network provider may place stand-alone “node support poles” in municipal park right of way or in right of way adjacent to residential areas.

In order to conform to the new state law and exercise the City's discretion retained in its provisions, the proposed ordinance declares findings and amends Chapters 14-11 and 15-7 where necessary in order to be effective on the effective date of the new state law. During review of 14-11 and 15-7, several provisions of code related to right of way permitting and pole attachment agreements were also modified to bring them into current practice and clarify existing language.

In summary, the ordinance includes the following substantive provisions:

- Makes finding necessary to administer the changes in state law, stating the importance and value of safe and accessible public rights of way and City infrastructure
- Modifies right of way management codes in Chapter 14-11 of City Code by accommodating new types of activities and facilities related to wireless networks
- Requires a permit for a wireless network facility to obtain review for appropriateness if the site is located in right of way adjacent to historical districts or landmarks
- Prohibits new wireless network node poles from being placed in rights of way in or adjacent to park roads or residential areas
- Clarifies discretion over and terms for City-owned pole attachment agreements in Chapter 15-7 of City Code
- Eliminates provision in Chapter 15-7 of City Code related to joint use of electric distribution poles
- Declares an emergency for immediate effect in order to conform City Code to the new state law that takes effect on September 1, 2017