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ORDINANCE NO.

**AN ORDINANCE AMENDING CITY CODE CHAPTER 15-7 REGARDING
ACCESS TO UTILITY INFRASTRUCTURE BY COMMUNICATIONS
PROVIDERS AND MANAGEMENT OF RIGHT-OF-WAY**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 15-7-1 (*Definitions*) is amended to read:

(A) Except as provided in Subsection (B), in this chapter:

- (1) APPLICANT means a person who applies to use utility infrastructure.
- (2) ATTACHMENT includes:
 - (a) on a pole, each aerial cable, together with its associated messenger cable, guy wire, anchors and other appurtenant and incidental facilities;
 - (b) in a conduit, each linear foot of occupancy of a City-owned conduit or duct by each cable or other attachment; and
 - (c) each antenna, transceiver, amplifier, repeater or other device or equipment of a user supported by, affixed to, contained in, or placed on or in a unit of utility infrastructure.
- (3) ATTACHMENT RIGHT means the right of a user to place, install, construct, replace, move, remove, keep, maintain, operate, or use an attachment on or in City-owned utility infrastructure under this chapter or a permit or contract issued under this chapter.
- (4) CABLE means a wire rope or a bound or sheathed assembly of conductors, wires, or fibers, including fiber optic cable, coaxial cable, and twisted pair copper cable. Each cable that is lashed to another cable or to a common messenger cable is a separate attachment.
- (5) COMMUNICATION SERVICES PROVIDER means a user who provides or offers to provide cable, telecommunications, or video services pursuant to a franchise or a federal or state certificate and who has a right to use the City's public right-of-way for the provision of those services under federal, state, or local law.
- ~~(5)~~ DIRECTOR means the director of the Austin Electric Utility.

1 (7) JOINT USER means a user who owns or controls at least 1,000 poles on
2 which the utility has placed electric lines or other equipment by agreement
3 with the joint user, regardless of whether the infrastructure contract required
4 by this chapter is in effect or has expired. Unless otherwise expressly stated,
5 a reference to a “user” in this chapter includes a joint user.

6 (8) JOINTLY-USED POLE means a pole owned or controlled by the utility or a
7 joint user.

8 (69) USER means a person who has been granted the right to install an attachment
9 under this chapter, regardless of whether the infrastructure contract required
10 by this chapter is in effect or has expired.

11
12 (710) UTILITY means the Austin Electric Utility.

13
14 (811) UTILITY INFRASTRUCTURE includes utility distribution poles,
15 transmission structures, ducts, transmission and distribution conduit, building
16 entry conduit, utility tunnels, manholes, vaults, radio towers, other radio
17 equipment, fiber optic cable capacity and active communications capacity,
18 poles and horizontal arms for street lights, poles and horizontal arms for traffic
19 signals, and appurtenant facilities.

20
21 **PART 2.** City Code Section 15-7-2 (*Purpose*) is amended to read:

22 § 15-7-2 PURPOSE

23
24 (A) This chapter establishes a uniform policy for use of utility infrastructure to enable
25 the City to:

- 26 (1) permit fair, reasonable, non-discriminatory, and uniform access to the
27 available capacity on utility infrastructure and other user-owned
28 infrastructure located within the public right-of-way;
- 29 (2) safeguard the reliability and integrity of the electric utility system;
- 30 (3) obtain fair compensation for the use of utility infrastructure through fees and
31 usage and other charges;

32 ~~[(4) comply with applicable federal, state, and local regulation, including the~~
33 ~~National Electrical Code, the National Electrical Safety Code, and the~~
34 ~~utility’s transmission and distribution standards;]~~provide open, comparable,
35 nondiscriminatory, and competitively neutral access to the public right-of-
36 way for cable television systems, telecommunications providers, and holders
37 of state-issued certificates of franchise authority for video services.

- 1 (5) support cost-effective, optimal use of public resources and economic
2 development through increased competition in [~~tele~~]communications
3 services delivery; and
- 4 (6) manage and regulate the use of the public right-of-way to protect the public
5 health, safety, and welfare by minimizing [~~avoid~~] the congestion,
6 inconvenience, cost, visual impacts, deterioration, safety hazards and other
7 adverse effects on the [~~City's street, highways, and~~] public right-of-way
8 which could result from the construction, operation, and maintenance of
9 redundant infrastructure.

10 **PART 3.** City Code Section 15-7-4 (*Fees and Charges*) is amended to read:

- 11
- 12 (A) Except as otherwise provided by this section, [~~F~~] the council shall establish the
13 fees and charges under this chapter by separate ordinance based on the type and
14 number of proposed attachments and the type of utility infrastructure on or in
15 which the proposed attachments will be placed.
- 16
- 17 (B) A charge established under this chapter may not exceed the maximum amount
18 permitted by applicable law.
- 19
- 20 (C) Filing fees and usage charges shall be calculated and applied in a consistent
21 manner for all similarly situated users. If federal or state law or regulation
22 preempts a filing fee or usage charge under this chapter, the filing fee and usage
23 charge collected by the City [~~may not exceed~~] shall be the maximum amount
24 permitted by federal or state law or regulation.
- 25
- 26 (D) Any attachment that the city manager determines is used exclusively for the
27 delivery of services to the public will not be subject to the established filing and
28 usage fees so long as the services are non-discriminatory and provided free of
29 charge.
- 30
- 31 (E) A joint user's annual usage charges shall be calculated on the difference between
32 the number of jointly-used poles owned by the utility and the number of jointly-
33 used poles owned by the joint user.

34

35 **PART 4.** Subsection (C) of City Code Section 15-7-5 (*Application to Use Utility*
36 *Infrastructure*) is amended to read:

37

38 (C) Denial of an application.

- 39
- 40 (1) The director may deny an application for an attachment if:
- 41

- 1 (a) the applicant fails to submit a complete application;
2
3 (b) the applicant fails to supplement its application with additional
4 information or otherwise cooperate with the utility as reasonably requested
5 in the evaluation of the application;
6
7 (c) the applicant fails to pay the filing fee;
8
9 (d) the proposed attachment[~~s are~~] is of excessive size or weight or would
10 otherwise subject utility infrastructure to unacceptable levels of
11 additional stress;
12
13 (e) [~~approval~~] the proposed attachment would jeopardize the reliability or
14 integrity of the electric system or of individual units of utility
15 infrastructure, or violate generally applicable engineering principles;
16
17 (f) [~~approval~~] the proposed attachment would present a safety hazard ~~to a~~
18 ~~City employee or the public~~;
19
20 (g) [~~approval~~] the proposed attachment would unreasonably impair the
21 City's ability to operate or maintain utility infrastructure;
22
23 (h) ~~approval would require an unacceptable change, upgrade, or addition~~
24 ~~to utility infrastructure~~there is insufficient capacity or placement of
25 the attachment would violate the National Electric Safety Code or the
26 utility's standard design criteria, and the utility infrastructure cannot
27 reasonably be modified or enlarged at the cost of the applicant ; or
28
29 (i) ~~approval would expose the City, the utility, its ratepayers, or other~~
30 ~~users to increased liability or financial risk; or~~
31
32 (i) the applicant is not in compliance with any provision of this chapter.
33

- 34 (2) If an application is denied, the director shall notify the applicant in writing
35 of the reason for the denial. If an application is denied, an applicant may file
36 a new application that corrects the reason for the denial. If an application is
37 denied for a reason other than that set forth in subsection (C)(1)(i), an
38 applicant may appeal the denial to the director no later than the 30th day
39 after the date of the denial as prescribed by the director. If the director
40 upholds an original decision which denies an applicant all or substantially all
41 requested attachment rights, the applicant may appeal to the city council
42 under Section 15-7-8 (Appeal to the City Council).

1
2 **PART 5.** City Code Section 15-7-7 (*Joint Use Agreements*) is amended to read:

3
4 § 15-7-7 JOINT USE ~~[AGREEMENTS]~~ OF POLES.

- 5
6 (A) ~~[This section applies to a person who owns or controls a minimum of 1,000 utility~~
7 ~~poles who offers the joint use of its poles by the utility in exchange for use of the~~
8 ~~City's utility infrastructure, if the utility has a use for the user's utility poles.~~
- 9 ~~(B) A person shall pay to the City the usage charges in accordance with Section 15-7-~~
10 ~~4 (*Fees and Charges*) on the difference between the number of jointly used utility~~
11 ~~poles owned by the City and the number of jointly used utility poles owned by the~~
12 ~~joint user.~~
- 13 ~~(C) Each person who uses a jointly used utility pole is]~~ A joint user and the utility are
14 responsible to perform [the] each person's own work on jointly used poles,
15 including construction of a jointly-used utility pole, and installation, operation,
16 maintenance (including tree trimming), replacement, removal, rearrangement, or
17 relocation of the person's attachments. If a joint user fails to perform required
18 work on or related to a jointly-used utility pole owned by the City, the utility may
19 perform the work on behalf of the joint user. If the utility performs work under
20 this section, it may elect to:
- 21 (1) charge the joint user for the City's expenses under this section including the
22 cost of labor, material, equipment, overhead, general and administrative
23 expense, general fund transfer, and other charges and costs; or
- 24 (2) own the utility infrastructure improvements installed or constructed by the
25 utility.
- 26 ~~[(D) Before a joint user may occupy City owned utility infrastructure, the joint user~~
27 ~~must execute an infrastructure usage contract under this chapter.~~
- 28 ~~(E) As a condition to a grant of the use of City owned utility infrastructure, a joint user~~
29 ~~must agree not to unreasonably deny other users the right to place attachments on~~
30 ~~the utility infrastructure of the joint user, to the extent of available capacity or~~
31 ~~space and under the terms of a usage agreement between the joint user and the~~
32 ~~other user, including payment of reasonable and non-discriminatory fees.]~~
- 33 (B) Upon the request of a communication services provider, a user who has utility
34 poles located in the City's public right-of-way shall allow the requesting
35 communication services provider to place attachments described in Subparagraph
36 15-7-1(A)(2)(a) on the user's poles within the City's right-of-way on rates, terms,
37 and conditions that are just, reasonable, and non-discriminatory.
38

1 (C) A rate, term, or condition for an attachment described in Subparagraph 15-7-
2 1(A)(2)(a) that has been approved or required by a rule, regulation, or order of the
3 Federal Communications Commission for either telecommunication or cable
4 service attachments shall be presumed to be reasonable and non-discriminatory
5 under subsection (B) with respect to attachments for state-franchised video service.
6

7 (D) This section does not require a user to offer a rate, term, or condition that would
8 conflict with a rate, term, or condition approved or required by a rule, regulation,
9 or order of the Federal Communications Commission.
10

11 **PART 6.** This ordinance takes effect on _____, 2013.

12 **PASSED AND APPROVED**

13
14 §
15 §
16 _____, 2013 § _____

17 Lee Leffingwell
18 Mayor

19
20
21 **APPROVED:** _____ **ATTEST:** _____
22 Karen M. Kennard Jannette S. Goodall
23 City Attorney City Clerk