

ORDINANCE NO. 001-2017

AN ORDINANCE OF THE TOWN OF BUFFALO GAP, TEXAS, ESTABLISHING STANDARDS FOR NETWORK NODES, NODE SUPPORT POLES, AND TRANSPORT FACILITIES IN THE PUBLIC RIGHT-OF-WAY; REQUIRING PERMITS FOR PLACEMENT OF NETWORK NODES, NODE SUPPORT POLES, AND TRANSPORT FACILITIES; ADOPTING APPLICATION AND RENTAL FEES ESTABLISHED UNDER STATE LAW; PROVIDING AN OPEN MEETINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Texas Legislature has adopted Senate Bill Number 1004 which adds Chapter 284 to the Local Government Code, entitled "Deployment of Network Nodes in Public Right-of-Way," and said bill has been signed by the Governor of the State of Texas, to be effective starting September 1, 2017; and

WHEREAS, the Town Council of the Town of Buffalo Gap, Texas intends to fully comply with and implement Chapter 284 of the Local Government Code and seeks to provide a fair, reasonable, and predictable process for the implementation of Chapter 284, while fulfilling its duty in protecting and managing the public right-of-way for the overall interest of public health, safety, and welfare of the citizens of Buffalo Gap.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BUFFALO GAP:

I. Enactment This Ordinance No. 001-2017 shall be the Network Nodes Ordinance of the Town of Buffalo Gap.

Section 1. Purpose and Scope.

(a) Purpose. The purpose of this Ordinance is to establish policies and procedures, for the placement of node support poles, network nodes, and transport facilities in the public right-of-way and on poles within the Town's jurisdiction, that will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the Town public right-of-way and the Town as a whole.

(b) Intent. In enacting this Ordinance, the Town is establishing uniform standards for obtaining permits for the placement of node support poles, network nodes, and transport facilities within the Town, and balancing the need of the Town to properly manage the public right-of-way with the needs and rights of network providers seeking to improve the services they provide.

(c) Relation with Chapter 284. This Ordinance is not meant to conflict in any way with Texas Local Government Code Chapter 284, and any interpretation or application of this Ordinance shall be consistent with that Chapter. All of the provisions, requirements, and duties contained in Chapter

284 of the Texas Local Government Code are in full force and effect, and the provisions, requirements, and duties contained herein are in addition thereto.

Section 2. Definitions.

All terms used in this Ordinance, not specifically defined herein, have the meaning provided in Texas Local Government Code § 284.002.

Town Code means ordinance provisions relevant to use of the public right-of-way adopted by the Town.

Day means calendar day.

Network Node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term 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. The term does not include (a) an electric generator; (b) a pole; or (c) a macro tower.

Network Provider means (a) a wireless service provider; or (b) a person that does not provide wireless services and that is not an electric utility but builds or installs network nodes, node support poles, or any other structure that supports or is capable of supporting a network node on behalf of a wireless service provider.

Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the Town has an interest. The term does not include a private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.

Section 3. Permit Required; Application.

(a) Permit Required. No person shall place, construct, modify, maintain, operate, relocate, or remove a network node, node support pole, or transport facility in the public right-of-way, including on or within already existing poles or facilities, without first obtaining a permit therefor from the Town in compliance with Texas Local Government Code Chapter 284, Subchapter D, and this Ordinance.

(b) Permit Application. All permit applications filed shall be on a form, paper or electronic, provided by the Town. The application shall be made by the network provider or its duly authorized representative and shall contain the following information:

- (1) The network provider's name, address, telephone number, and e-mail address.

(2) Construction and engineering drawings and other information confirming that the construction will be consistent with Town Code and all other applicable law.

(3) A certificate that any proposed network node complies with applicable regulations of the Federal Communications Commission.

(4) Certification that any proposed network node will be placed into active commercial service by or for the network provider not later than 60 days after the date the construction and final testing of the network node is complete.

(5) Copies of an analysis or study establishing that the proposed network node, node support pole, or transport facility will not cause any harmful radio frequency interference with any telecommunications operation of the Town.

(6) Any other information requested by the Town that is reasonably related to the network provider's use of the public right-of-way.

The network provider may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(c) Review of Applications. The Town shall review all applications according to the standards, and within the time limits, described below.

(1) Not later than the thirtieth (30th) day after the date the Town receives an application for a permit for a network node or node support pole, or the tenth (10th) day after the date the Town receives an application for a transport facility, the Town shall determine if the application is complete and notify the applicant of that determination. If the Town determines that the application is not complete, the Town shall specify what information is missing.

(2) The Town shall approve or deny an application for a node support pole not later than the one-hundred and fiftieth (150th) day after receiving a complete application.

(3) The Town shall approve or deny an application for a network node not later than the sixtieth (60th) day after receiving a complete application.

(4) The Town shall approve or deny an application for a transport facility not later than the twenty-first (21st) day after receiving a complete application.

(5) If the Town denies a complete application, it shall document the basis for denial, including the specific applicable code provisions or other rules, regulations, or law on which the denial was based. The Town shall send the documentation by electronic mail to the applicant on or before the date the Town denies the application.

(6) An applicant whose application has been denied may cure the deficiencies identified by the Town and resubmit the application no later than the thirtieth (30th) day after the date the Town denied the application.

(7) The Town's review of a revised application is limited to the deficiencies cited in the denial documentation. The Town shall approve or deny a completed revised application no later than the ninetieth (90th) day after the date the completed revised application is received.

(d) Application Fees. Consistent with Texas Local Government Code § 284.156(b), all applications for permits network nodes shall be accompanied by a fee of \$500 for up to five network nodes plus \$250 for each additional node. All applications for permits for node support poles shall be accompanied by a fee of \$1,000.

(e) Consolidated Application. If a consolidated application for placement of 2 – 30 network nodes is submitted, the Town may deny the entire application based on any deficiencies found within the application, even though those deficiencies do not affect all nodes included in the application.

(f) Cure Following Denial. If a network provider's application is denied, and the network provider cures the deficiencies identified by the Town and resubmits its application, the network provider must pay the actual costs incurred by the Town as a result of the resubmission, to be determined on a case-by-case basis.

Section 4. Public Right-of-Way Fees Adopted.

(a) Payment of Fees Required. Network providers installing equipment in the public right-of-way shall pay to the Town the following public right-of-way fees established by Chapter 284 of the Texas Local Government Code and adopted herein. The obligation to pay these right-of-way fees is separate and apart from any permit application fee that may be required.

(1) Transport Facilities. Consistent with Texas Local Government Code § 284.055(b)(2), a network provider shall pay the Town a monthly public right-of-way fee for transport facilities placed in the public right-of-way at a rate equal to \$28 multiplied by the number of the network provider's network nodes located in the public right-of-way.

(2) Network Nodes. Consistent with Texas Local Government Code § 284.053, once a network provider has installed and made operational a network node in the public right-of-way, the network provider shall pay to the Town compensation for use of the public right-of-way in the amount of \$250 annually per node in the public right-of-way.

(3) Use of Service Poles. Consistent with Texas Local Government Code § 284.056, if a network provider places network nodes on service poles within the Town limits, the network provider shall pay the Town an annual fee of \$20 per year per service pole utilized.

(b) Rate Increase. The Town may increase the rates contained in this section consistent with Texas Local Government Code § 284.054.

(c) Ceasing Payment. A network provider may stop paying the fees contained in this section for specific network nodes or transport facilities when such node or facility is no longer in use due to the occurrence of a situation described in Section 7, below.

Section 5. Exceptions.

(a) A network provider is not required to apply for and obtain a permit or to pay a fee for the following activities:

- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) The replacement or upgrading of a network node or pole with a 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;
- (3) The installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles, in compliance with the National Electric Safety Code.

(b) Before engaging in any of the activities described by this Section, the network provider shall provide written notice to the Town, describing the work to be done and the location of the work, at least thirty (30) days before the work will commence.

Section 6. Certain Additional Requirements.

(a) Advance Written Approval. A network provider shall obtain written approval from the Town before:

- (1) Installing a new node support pole in a public right-of-way if the public right-of-way is in a municipal park or is adjacent to a street or thoroughfare that is (A) not more than 50 feet wide; and (B) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (2) Collocating new network nodes or installing new node support poles in an area of the Town zoned or otherwise designated as a historic district.

(b) Written Agreement. A network provider must enter into a written agreement with the Town before collocating network nodes on service poles or on Town-owned utility poles.

Section 7. Removal, Relocation or Modification of Network Nodes in the Right-of-Way.

(a) Notice by Town to Disconnect or Remove. Within 90 days following written notice from the Town, a network provider shall, at its own expense, temporarily or permanently disconnect, remove, relocate, change or alter the position of any network node, node support pole, or transport facility within the public right-of-way whenever the Town has determined that such removal, relocation,

change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the public right-of-way.

(b) Emergency Removal or Relocation of Facilities. The Town retains the right and privilege to disconnect or move any network node, node support pole, or transport facility located within the public right-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall notify the network provider and allow the network provider an opportunity to move its own facilities prior to the Town disconnecting or removing a facility and shall notify the network provider after disconnecting or removing a network node, support pole, or transport facility.

(c) Abandonment of Facilities. A network provider shall notify the Town of its intent to abandon or disconnect a network node, node support pole, or transport facility within the public right-of-way, and shall do so in writing no less than 60 days before such abandonment or disconnection. Following receipt of such notice, the Town may direct the network provider to remove all or any portion of a network node, node support pole, or transport facility if the Town, or any of its departments, determines, subject to Town Code, that such removal is necessary to protect public health, safety and welfare.

Section 8. Design Manual.

The Town may choose to adopt a design manual as allowed by Texas Local Government Code § 284.108. A network provider shall comply with the Town's design manual, if any, in place on the date a permit application is filed in relation to work for which the Town has approved a permit application.

II. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Government Code.

III. Effective Date. This ordinance shall take effect immediately upon its adoption by the Town Council and publication as may be required by the Local Government Code.

The above and foregoing ordinance was duly proposed, read in full and adopted on the 14th day of September 2017, at a regular meeting of the Town Council.


David Perry, Mayor

ATTEST:


Cindy Husbands, City Secretary