

ORDINANCE NO. 353

AN ORDINANCE OF THE CITY OF SEVEN POINTS, TEXAS, ESTABLISHING STANDARDS FOR THE CONSTRUCTION AND INSTALLATION OF CELLULAR NETWORK NODES AND RELATED FACILITIES IN RIGHTS-OF-WAY OF THE CITY OF SEVEN POINTS, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Seven Points ("City") finds it necessary to regulate the construction and installation of cellular network nodes and related facilities within the City and, more specifically, to manage such construction and installation of rights-of-way in order to preserve the public health, safety and welfare of its citizens; and

WHEREAS, the City finds that state and federal law also provide regulations and guidance concerning the installation of cellular network nodes and related facilities, and the City hereby desires to comply fully with state and federal law to the extent it preempts local municipal control.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEVEN POINTS, TEXAS:

**I.
PURPOSE AND SCOPE**

A. The purpose of this Ordinance is to establish policies and procedures for constructing and installing cellular network nodes and related facilities in the City's rights-of-way, which will provide public benefit consistent with the preservation of safe usage and visual quality of the City's rights-of-way.

B. By the enactment of this Ordinance, the City intends to exercise its authority over cellular network nodes and related facilities located within the City's rights-of-way by establishing uniform standards to address the construction and installation of said facilities, including, without limitation:

- (i) prevent interference with the use of rights-of-way and other public places;
- (ii) prevent the creation of visual and physical obstructions and other conditions hazardous to vehicular and pedestrian traffic;
- (iii) prevent interference with the facilities and operations of facilities lawfully located in City's rights-of-way or public property;
- (iv) protect against environmental damage, including damages to trees and other vegetation;

- (v) preserve neighborhood character where facilities are installed; and
- (vi) impose time requirements for the construction and installation of facilities.

C. Applications to construct, install, modify or replace cellular network nodes or related facilities shall be treated as a permitted use exempt from local or zoning review.

D. In the event that applicable federal or state laws or regulations conflict with the requirements of this chapter, a small cell facility operator, as that term is defined herein, shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or state laws or regulations.

II. DEFINITIONS

A. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

B. "Colocate" and "Colocation" means the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a Pole.

C. "Historic District" means an area that is zoned or otherwise designated as a Historic District under the City of Seven Points' Zoning Ordinance.

D. "Network Node" means equipment at a fixed location that enables wireless communications between user equipment and communications network. The term includes the following:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an Antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configurations;
- (iii) coaxial or fiber optic cable that is immediately adjacent to and directly associated with a particular Colocation.

The term does not include an electric generator, a Pole, or a macro-tower.

E. "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.

F. "Node Support Pole" means a pole installed by a Network Provider for the primary purpose of supporting a Network Node.

G. "Permit" means a written authorization for the use of the Public Right-of-Way or Colocation on a service pole required by the City before a Network Provider may perform an action to construct or install a project over which this Ordinance regulates.

H. "Pole" means a service pole, municipally owned utility pole, Node Support Pole, or utility pole.

I. "Public Right-of-Way" means the area on, below, adjacent or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which City has an interest.

J. "Transport Facility" means each transmission path physically within a Public Right-of-Way, extending within a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

K. "Wireless Service Provider" means a person or entity that provides wireless service to the public.

III. SIZE LIMITATIONS OF NETWORK NODES

A. A Network Node to which this Ordinance applies must conform to the following size restrictions:

(i) Each Antenna that does not have exposed elements and is attached to an existing structure or Pole:

- (a) must be located inside an enclosure not more than six (6) cubic feet in volume;
- (b) may not exceed a height of three (3) feet above the existing structure or Pole; and
- (c) may not protrude from the outer circumference of the existing structure or Pole by more than two (2) feet.

(ii) If an Antenna has exposed elements and is attached to an existing structure or Pole, the Antenna and all of the Antenna's exposed elements:

- (a) must fit within an imaginary enclosure of not more than six (6) cubic feet;
- (b) may not exceed a height of three (3) feet above the existing structure or Pole; and

(c) may not protrude from the outer circumference of the existing structure or Pole by more than two (2) feet.

(iii) The cumulative size of the other wireless equipment associated with the Network Node attached to an existing structure or Pole may not:

(a) be more than twenty-eight (28) cubic feet in volume; or

(b) protrude from the outer circumference of the existing structure or Pole by more than two (2) feet.

(iv) Ground based enclosures, separate from the Pole, may not be higher than three (3) feet six (6) inches from grade, wider than three (3) feet six (6) inches, or deeper than three (3) feet six (6) inches;

(v) Pole mounted enclosures may not be taller than five (5) feet;

(vi) Equipment attached to Node Support Poles may not protrude from the outer edge of the Node Support Pole by more than two (2) feet.

IV.

NATIONAL ELECTRICAL SAFETY CODE

Equipment attached to a utility pole which is subject to regulation by this Ordinance, must be installed in accordance with the National Electrical Safety Code, and utility pole owners construction standards.

V.

PUBLIC RIGHT-OF-WAY RATE

A. A wireless facility operator shall pay an annual rate to the City of Seven Points regarding the construction and installation of any and all facilities the subject of this Ordinance, located within a Public Right-of-Way, a fee of two hundred fifty dollars (\$250) per annual basis multiplied by the number of Network Nodes installed in said Right-of-Way located within the City's corporate boundaries.

B. The City may adjust the amount of the Public Right-of-Way rate once annually by an amount equal to one-half of the annual charge, if any, in the consumer price index. In such an event, 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 City on or after the sixtieth (60th) day following such notice.

C. A Network Provider may install its own Transport Facilities in the City's Right-of-Way after obtaining a Permit from the City and paying a monthly Right-of-Way rate of twenty-eight dollars (\$28) multiplied by the number of the Network Providers, Network Nodes located within the City's Right-of-Way.

D. The Colocation of Network Nodes on municipally owned service Poles may be allowed by agreement between the City and the Network Service Provider at a rate of twenty dollars (\$20) per year per service pole.

**VI.
CONSTRUCTION AND MAINTENANCE GUIDELINES**

A. A Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

- (i) obstruct, impede or hinder the usual travel or public safety on a Public Right-of-Way;
- (ii) obstruct the legal use of a Public Right-of-Way by other utility providers;
- (iii) violate or conflict with the any applicable City Public Right-of-Way design specifications; or
- (iv) violate any state or federal law.

**VII.
GENERAL LIMITATION ON PLACEMENT**

A. A Network Provider shall ensure that each new, modified or replacement utility Pole or Node Support Pole installed in a City Right-of-Way that is the subject of this Ordinance does not exceed the lessor of:

- (i) Ten (10) feet in height above the tallest existing utility Pole located within five hundred (500) linear feet of the new Pole in the same Public Right-of-Way; or
- (ii) Fifty-Five (55) feet above ground level.

B. A Network Provider may not install a new Node Support Pole in a City Right-of-Way without the City's written consent if the City Right-of-Way is located in a municipal park or is adjacent to a street or thoroughfare that is not more than fifty (50) feet in width and adjacent to areas zoned single family residential, multi-family residential or undeveloped land that is designated for residential use by the City's Zoning Ordinance.

**VIII.
HISTORIC DISTRICT**

A Network Provider must obtain advance approval from the City before Colocating new Network Nodes or installing new Node Support Poles in any area zoned or otherwise designated as a Historic District by the City. As a condition for approval of such facilities within a Historic District, the City will require the Network Provider to present reasonable design and/or

concealment measures for the new Network Nodes or new Node Support Poles. To this end, any Network Provider wishing to place facilities the subject of this Ordinance in an area designated as a Historic District must comply with any and all design and aesthetics standards for the placement of such facilities within the Historic District as may be applicable by City codes, regulations and guidelines.

IX. DESIGN STANDARDS

A Network Provider installing and/or constructing facilities the subject of this Ordinance in a Public Right-of-Way shall comply with any and all design standards for such facilities as may be required by the City.

X. APPLICATIONS AND PERMITS

- A. Before the installation of any facility the subject of this Ordinance in a Public Right-of-Way, a Network Provider shall obtain a Permit from the City.
- B. As part of the Permit application process, a Network Provider must include construction and engineering drawings and information to confirm compliance with any and all applicable City design specifications, codes and standards.
- C. As part of the application process, the Network Provider shall provide a certificate to the City that the facilities being constructed and installed in the City's Right-of-Way comply with all applicable regulations of the Federal Communications Commission ("FCC").
- D. A Network Provider seeking a Permit for the placement of facilities in the City Right-of-Way must certify, in writing, that the facilities the subject of this Ordinance will be placed into active commercial service not later than the sixtieth (60th) day after the date of construction, installation and final testing of the facilities are completed.
- E. Not later than the thirtieth (30th) day after the date the City receives an application for a Permit for a Network Node or Node Support Pole, or the tenth (10th) day after the date the City receives an application for a Permit for a Transport Facility, the City shall determine whether the application is complete and notify the applicant of that determination. If the City determines that the application is not complete, the City shall specify, in writing, what information is missing from the application.
- F. The City shall approve or deny an application for a Node Support Pole not later than the one hundred and fiftieth (150th) day after the date the City receives a completed application. The City shall approve or deny an application for a Network Node not later than the sixtieth (60th) day after the date the City receives a complete application. The City shall approve or deny an application for a Transport Facility not later than the twenty-first (21st) day after the date the City receives a completed application. In the event the City fails to approve or deny an application as provided herein, the application shall be deemed approved.

G. A denial by the City of an application shall be made in writing and shall specifically set forth the deficiency(ies) of the application.

H. A Network Provider the subject of an application denial shall, within thirty (30) days, be allowed to cure the deficiency(ies) and resubmit the application without paying any additional application fee. Approval or denial of an amended or revised application shall be made by the City within ninety (90) days.

I. A Network Provider must begin the installation the subject of any Permit granted by the City no later than six (6) months after final approval, and shall diligently pursue the installation to completion within said time period. At the City's discretion, a longer time period for completion may be granted upon request by the Network Provider.

J. The City shall charge an application fee for a Permit under this section as follows:

(i) One hundred dollars (\$100) per application covering up to five (5) Network Nodes;

(ii) Two hundred and fifty dollars (\$250) for each additional Network Node per application; and

(iii) One thousand dollars (\$1000) per application for each Node Support Pole.

XI. SEVERABILITY

Should any section, sentence, provision or regulation of this Ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such findings shall not affect the remaining sections, sentences, provisions or regulations hereof, which shall remain in full force and effect.

XII. REPEALER

Any ordinance, resolution or other regulation of City that is in conflict with any provision of this Ordinance is hereby repealed to the extent of said conflict.

**XIII.
PENALTY**

Any person or entity found to be in violation of this Ordinance may be issued a citation for said violation. Each day a violation occurs shall be considered a separate offense. Any citation shall be deemed a Class C Misdemeanor and may be punishable by a fine not to exceed five hundred dollars (\$500).

**XIV.
PUBLICATION AND EFFECTIVE DATE**

This Ordinance shall take effect upon its passage, approval and publication.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEVEN POINTS, TEXAS, ON THIS 12th DAY OF October, 2017.

APPROVED:

CITY OF SEVEN POINTS, TEXAS

By: _____

Bill Hash, Mayor

ATTEST:

Shirley Kirksey
Shirley Kirksey, City Secretary

