

ORDINANCE NO. 3473

AN ORDINANCE OF THE CITY OF NORTH RICHLAND HILLS, TEXAS AMENDING CHAPTER 70, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, BY CREATING A NEW ARTICLE VIII, USE OF PUBLIC RIGHTS-OF-WAY FOR SMALL CELL WIRELESS FACILITIES; ADOPTING A DESIGN MANUAL TO ESTABLISH UNIFORM STANDARDS FOR THE CONSTRUCTION, DESIGN AND INSTALLATION OF SMALL CELL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF NORTH RICHLAND HILLS, TEXAS; PROVIDING A PENALTY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES AND REPEAL CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of North Richland Hills (the "City"), a home-rule municipality created under the laws and the Constitution of the State of Texas, is charged with maintaining control of and managing access to the public right-of-way for the health, safety and welfare of the public; and

WHEREAS, the City finds it is necessary to regulate the location of small cell wireless facilities within the City's public rights-of-way in order to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of network nodes and node support poles, while enabling the City to minimize and reduce the impact to public safety within the City's rights-of-way and to minimize and reduce impacts to the City, its residents, and visitors, for the general safety and health of the public; and

WHEREAS, the City recognizes that small cell facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services; and

WHEREAS, the City intends to fully implement and comply with Chapter 284 of the Texas Local Government Code and comply with federal law to the extent it preempts local municipal control.

WHEREAS, the guidelines and procedures set forth herein are in furtherance of the City's authority to manage the public rights-of-way to ensure the health, safety and welfare of the public, and to require Network Providers to provide fair and reasonable compensation for use of the public rights-of-way and for collocation on service poles; and

WHEREAS, state law specifically authorizes municipalities to adopt a design manual for the installation and construction of network nodes and new node support poles in the public rights-of-way that include additional installation and construction details that do not conflict with state law; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH RICHLAND HILLS, TEXAS, THAT:

Section 1: The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct and are fully incorporated herein into this Ordinance.

Section 2: That Chapter 70, Streets, Sidewalks and Other Public Places, of the North Richland Hills Code of Ordinances is hereby amended by adding Article VIII, Use of Public Rights-of-Way for Small Cell Wireless Facilities, which shall read as follows:

ARTICLE VIII. - USE OF PUBLIC RIGHTS-OF-WAY FOR SMALL CELL WIRELESS FACILITIES

Sec. 70-232. - Purpose and scope; reference.

(a) *Purpose.* The purpose of this article is to establish policies and procedures for the installation of small cell antenna facilities and the placement of network nodes and node support poles in the City's public rights-of-way, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City's public rights-of-way and the City as a whole.

(b) *Scope and Intent.* In enacting this article, the City intends to exercise its authority over small cell facilities located in the public rights-of-way by establishing uniform standards to address potential issues, including without limitation:

- (1) prevent interference with the use of rights-of-way and other public places, including but not limited to, streets, sidewalks, medians and parkways;
- (2) prevent the creation of visual and physical obstructions and other conditions hazardous to vehicular and pedestrian traffic;
- (3) prevent interference with the facilities and operations of facilities lawfully located in public rights-of-way or on public property at the time a permit is granted;
- (4) protect against environmental damage, including damage to trees;
- (5) preserve the character of residential and historic areas, city parks and deign districts, where facilities may be installed; and
- (6) facilitate rapid deployment of small cell facilities and network nodes to provide the benefits of wireless services to citizens.

(c) *Reference.* This article shall be referred to as the "Small Cell Wire Facilities Ordinance."

Sec. 70-233 – Authority; application.

- (a) *Authority.* This article is enacted pursuant to and in accordance with Chapter 284 of the Texas Local Government Code.
- (b) *Application.* This article applies to all wireless services providers who place small cell antenna wireless facilities in, on or over the City's public rights-of-way.
- (c) *Zoning.* Applications to construct, modify, maintain, operate, relocate, remove or replace a network node or node support shall be treated as a permitted use, exempt from the requirement of a special use permit or other zoning review or land use approval.
- (d) *Conflicts with Other Articles.* This article supersedes all articles adopted prior to the effective date of this article to the extent such article conflicts with any prior article.
- (e) *Conflicts with State and Federal Laws.* In the event that applicable federal or State laws or regulations conflict with the requirements of this Chapter, the Network Provider shall comply with the requirements of this article to the maximum extent possible without violating federal or State laws or regulations.
- (f) *Administration.* This article shall be administered by the City Engineer.
- (g) *Design Manual.* Additional policies and procedures for the installation and construction of network nodes and node support poles in the public rights-of-way that include installation details are hereby included and adopted as the City of North Richland Hills Small Cell Wireless Facilities Design Manual (Design Manual), which is attached hereto to this Ordinance as Exhibit "A" and incorporated herein for all purposes as if set forth in this Ordinance.

Sec. 70-234 - Definitions.

All terms used in this Article shall have the meaning ascribed to them in Chapter 284 of the Texas Local Government Code and in the City of North Richland Hills Small Cell Wireless Facility Design Manual.

Sec. 70-235 - Permit Required; Applications and Fees

- (a) *Permit Required.* A permit is required for the placement of a small cell wireless facilities in the public rights-of-way, except as otherwise provided in this article.
- (b) *Permit Application.* All applications pursuant to this article shall be filed on a form provided by the City. The applicant may designate material as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.
- (c) *Application Requirements.* The application shall be made in accordance with the requirements set forth in the Design Manual.
- (d) *Application Fees.* Unless otherwise provided by law, all applications for permits

pursuant to this article shall be in accordance with Appendix A, Fee Schedule.

- (e) *Time for Review.* The City shall comply with all timelines for review and approval of a permit application as set forth in Chapter 284, Sec. 284.154.

Sec. 70-236 – Design Districts.

The following locations of the city of North Richland Hills shall be and are hereby designated to be Design Districts within the meaning of Chapter 284 of the Texas Local Government, Sec. 284.002.

- (a) HomeTown (Town Center zoning district)
- (b) Iron Horse Transit Oriented Development District
- (c) Smithfield Transit Oriented Development District
- (d) City Point

Sec. 70-237 - Effect of Permit.

- (a) *Authority Granted; No Property Right or Other Interest Created.* A permit from the City authorizes an applicant to undertake only certain activities in accordance with this article in City rights-of-way, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may have an interest in the rights-of-way.
- (b) *Locations.* In the event that the actual locations of any wireless facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the application, the applicant shall notify the City prior to completion of the work.
- (c) *Duration.* No permit issued under this article shall be valid for a period longer than six (6) months unless construction is actually begun within that period and is thereafter diligently pursued to completion.

Sec. 70-238 - Removal, Relocation, or Modifications of Wireless Facilities

- (a) *Notice.* Within ninety (90) days following written notice from the City, Network Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.
- (b) *Emergency Removal or Relocation of Facilities.* The City retains the right and privilege to cut or move any small cell wireless facilities located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall attempt to notify the Network Provider, if known, prior to cutting or removing a wireless facility and shall notify the Network Provider, if known, after

cutting or removing a small cell facility.

Sec. 70-239. – Abandonment of Facilities.

Upon abandonment of a small cell wireless facility within the rights-of-way of the City, the Network Provider shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the Network Provider to remove all or any portion of the small cell wireless facility if the City Engineer determines that such removal will be in the best interest of the public health, safety and welfare.

Sec. 70-240. – Insurance, Indemnity, Bonding and Security Deposits.

- (a) Insurance, bonding, and security deposits shall be in provided in strict accordance with the City requirements for utility work within the public rights-of-way.
- (b) Indemnity shall be provided in accordance with Local Government Code Chapter 283, Sec. 283.057 (a) and (b), as amended or revised.

- Section 3: Any person, firm or corporation, who violates any provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not more than Five Hundred Dollars (\$500.00), for each offense. Each day the violation continues shall constitute a separate offense.
- Section 4: This Ordinance shall be cumulative of all provisions of the Code of Ordinances of the City of North Richland Hills, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.
- Section 5: It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.
- Section 6: All rights and remedies of the City of North Richland Hills are expressly saved as to any and all violations of the provisions of any ordinances in the Code of Ordinances of the City of North Richland Hills that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 7: The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clause of this ordinance two times.

Section 8: This ordinance shall be in full force and effect upon publication as required by Section 7 herein, but not earlier than September 1, 2017.

AND IT IS SO ORDAINED.

PASSED AND APPROVED on the 28th day of August, 2017.

CITY OF NORTH RICHLAND HILLS

By _____
Oscar Trevino, Mayor

ATTEST:

Alicia Richardson, City Secretary

APPROVED TO FORM AND LEGALITY:

Maleshia B. McGinnis, City Attorney

EXHIBIT “A”
Ordinance No. 3473

SMALL CELL WIRELESS FACILITIES DESIGN MANUAL