

CITY OF LAKEWAY, TEXAS

ORDINANCE NO. 2019-02-19-01

AN ORDINANCE OF THE CITY OF LAKEWAY, TEXAS, AMENDING THE CODE OF ORDINANCES, TITLE II: BUILDING AND DEVELOPMENT REGULATIONS; CHAPTER 28: SUBDIVISION AND SITE DEVELOPMENT; ARTICLE 28.09: STANDARDS AND SPECIFICATIONS BY ADDING SEC. 28.09.019 (DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHTS-OF-WAY); AND PROVIDING FOR SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lakeway, Texas (“City”) seeks to provide for the public health, safety, and welfare of its citizens; and

WHEREAS, in addition to other statutory authority, Chapter 284 of the Local Government Code grants a municipality the authority to manage the public right-of-way for the health, safety, and welfare of the public by regulating access to and structures within the right-of-way; and

WHEREAS, the City is further authorized to receive from network providers fair and reasonable compensation for use of the public right-of-way and for collocation on poles; and

WHEREAS, as authorized under law, and determined to be in the best interest of the citizens of Lakeway, the City Council deems it necessary to establish certain rules and policies for the orderly and efficient deployment of network nodes within the City.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Lakeway, Texas:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Title II (Building and Development Regulations), Chapter 28 (Subdivision and Site Development), Article 28.09 (Standards and Specifications) of the City of Lakeway Code of Ordinances is hereby amended by adding Sec. 28.09.019 (Deployment of network nodes in public rights-of-way) as follows:

“Sec. 28.09.019 Deployment of network nodes in public rights-of-way

(a) Applicability. This section shall apply to the deployment of all network nodes, network support poles, and transport facility in the City rights-of-way in accordance with Texas Local Government Code Chapter 284, as amended.

(b) Definitions. The definitions of the following terms shall be the definitions of those terms pursuant to Texas Local Government Code chapter 284, as amended:

- (1) Network node;
- (2) Network provider;
- (3) Node support pole;
- (4) Public right-of-way;
- (5) Public right-of-way rate;
- (6) Service pole; and
- (7) Transport facility.

(c) Public right-of-way rate. A network provider shall pay the public right-of-way rates for use of the public right-of-way in accordance with Appendix A of this Code.

(d) Collocation on service poles. A network provider may collocate on a service pole subject to a license agreement with the City and upon payment of fees in accordance with Appendix A of this Code.

(e) Design manual. Any network provider installing network nodes in the City shall comply with a design manual on file with the Building and Development Services Department and as amended by the Director of Building and Development Services or their designee.

(f) Prohibited installation. Installation of network node support poles is prohibited in the public right-of-way of municipal parks and adjacent to certain streets or thoroughfares pursuant to Texas Local Government Code section 284.104, as amended.

(g) Permit required.

(1) A network provider shall obtain a permit from the City before installing a network node, node support pole, or transport facility in public right-of-way.

(2) A network provider who submits a permit application to install or collocate multiple network nodes may file a consolidated permit application with the Building and Development Services Department for not more than 30 network nodes.

(3) Application. A network provider shall complete and submit to the City a Utility Development or Utility Maintenance permit application, pursuant to the requirements set forth in the Design Manual, as amended. All relevant fees in accordance with Appendix A of this Code shall be submitted in accordance with the application.

(h) Application review process.

(1) Determination of completeness.

(A) The City shall determine whether an application is complete and notify the application of that determination not later than:

(i) The 30th day after the City receives and application for a permit for a network node or node support pole; and

(ii) The 10th day after the City receives an application for a permit for a transport facility.

(B) If the City determines that the application is not complete, the City shall specifically identify the missing information.

(2) Action on application.

(A) The Director of Building and Development Services or their designee shall approve or deny an application:

(i) For a node support pole not later than the 150th day after the date the City receives the complete application;

(ii) For a network node not later than the 60th day after the date the City receives the complete application; and

(iii) For a transport facility not later than the 21st day after the date the City receives the complete application.

(B) An application shall be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed by this subsection.

(3) Denial of application.

(A) If the Director of Building and Development Services or their designee denies a complete application, the Director of Building and Development Services or their designee must document the basis for denial, including the specific applicable Code provisions or other municipal rules, regulations, or other law on which the denial was based. The Director of Building and Development Services or their designee shall send the documentation by electronic mail to the applicant on or before the date the Director of Building and Development Services or their designee denies the application.

(B) Not later than the 30th day after the date the Director of Building and Development Services or their designee denies the application, the applicant may cure the deficiencies identified in the denial documentation and resubmit the application without paying an additional application fee, other than a fee for actual costs incurred by the City. Notwithstanding, subsection (2) herein, the Director of Building and Development Services or their designee shall approve or deny the revised completed application after a denial not later than the 90th day after the date the City receives the completed revised application. The Director of Building and Development Services' or their designee's review of the revised application is limited to the deficiencies cited in the denial documentation.

APPENDIX A FEE SCHEDULE

Sec. A6.004 Reserved Network nodes, node support poles, and transport facilities in public right-of-way.

These amounts are pursuant to Texas Local Government Code Chapter 284 and shall automatically be amended in accordance with any amendment to that Chapter.

- (1) Application fee. The lesser of:
 - (A) The actual, direct, and reasonable costs the municipality determines are incurred in granting or processing an application that are reasonably related in time to the time the costs of granting or processing an application; and
 - (B) Five hundred dollars (\$500.00) per application covering up to five (5) network nodes, two hundred and fifty dollars (\$250.00) for each additional network node per application, and one thousand dollars (\$1,000.00) per application for each pole.

- (2) Public right-of-way rate.
 - (A) Network node: two hundred and fifty dollars (\$250.00) per year multiplied by the number of network nodes installed in the public right-of-way. This amount shall adjust annually by an amount equal to one-half the annual change, if any, in the consumer price index.
 - (B) Transport facility rental rate: twenty-eight dollars (\$28.00) per network node per month, unless an equal or greater amount is paid the City (e.g., under Texas Local Government Code chapter 283 and/or Texas Utilities Code chapter 66).
 - (C) Collocation of network nodes to service poles: twenty dollars (\$20.00) per year per service pole.

3. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

4. REPEALER

All Ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

5. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication as provided for by law.

6. PROPER NOTICE & MEETING

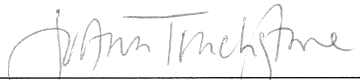
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, and Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this 19th the day of February, 2019, by the City Council of Lakeway, Texas.

CITY OF LAKEWAY:

By: 
Sandra L. Cox, Mayor

ATTEST:


Jo Ann Touchstone, City Secretary

