

ORDINANCE NO. 3825

AN ORDINANCE OF THE CITY OF CARROLLTON AMENDING TITLE V OF THE CARROLLTON CITY CODE CHAPTER 57 – USE OF RIGHT-OF-WAY BY PUBLIC UTILITIES, BY CONFORMING PROVISIONS TO STATE LAW AND ADDING PROVISIONS RELATED TO WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY; PROVIDING FOR A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.

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

Section 1

That Title V, Chapter 57, “Use of Right-Of-Way by Public Utilities,” of the Carrollton City Code is hereby amended to read as follows:

CHAPTER 57: USE OF RIGHT-OF-WAY BY PUBLIC UTILITIES

§ 57.01 TITLE

This Chapter may be known and cited as the Right-of-way Management Ordinance for the City of Carrollton, Texas.

§ 57.02 CONSTRUCTION; GOVERNING LAW

This Chapter shall be construed under and in accordance with the laws of the State of Texas and the City Charter and City Code to the extent that such Charter and City Code are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

§ 57.03 SCOPE

This Chapter shall be effective within the geographical limits of the City, including any areas subsequently annexed by the city.

§ 57.04 DEFINITIONS

Director means the City Manager, or his designee.

Facilities means the plant and equipment of a public utility or network provider and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public utility or network provider.

NPDES is the National Pollution Discharge Elimination System for permitting of stormwater runoff, administered by the Environmental Protection Agency or the Texas Natural Resources Conservation Commission.

Public Utility or *Utility* or *User* includes but is not limited to any electric utility, gas utility, telecommunications utility, cable company, water utility, sewer utility, or network provider.

Street or *public way* or *public right-of-way* or *public rights-of-way* or *rights-of-way* or *right-of-way* means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by or under the control of the City, to which the City holds the property rights in regard to the use for utilities.

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 on behalf of a wireless provider: (1) network nodes; or (2) node support poles or any other structure that supports or is capable of supporting a network node.

Wireless Services Design Manual is Carrollton's design, permitting, construction, and maintenance manual for small cell wireless technology including network nodes, node support poles and related ground equipment.

§ 57.05 CRIMINAL PENALTIES

(A) Any violation or failure to abide by, and comply with, any provision or requirement of this Ordinance shall be violation of City Ordinance, and shall be punished in accordance with § 10.99 of this Code.

(B) Each day upon which there exists a violation of this chapter, or a failure to abide by, or comply with, any provision or requirement of this chapter, shall constitute a separate occurrence, and may subject the offender to separate criminal penalties.

(C) Prosecution pursuant to this section is in addition to and does not supplant other remedies.

(D) Prior to initiation of enforcement litigation, the User shall be given the opportunity to correct the violation within the timeframe specified by the Director.

§ 57.06 CIVIL PENALTIES

(A) Civil penalties may be imposed for the violation of any provision of this Chapter, as follows:

(1) Up to one thousand dollars (\$1,000.00) for each violation, and each day of a continuing violation may be considered a new violation; and/or

(2) If applicable, default and revocation of any or all permits granted to allow work in the rights-of-way, subject to the procedural guidelines noted in this Chapter and any agreement which applies to the right-of-way User, and further subject to any limitations imposed by federal or state law.

(B) In imposing the penalties and the amount, the City may weigh all applicable factors, such as damages caused by the violation, reasons for the violation, the seriousness of the violation, and all other factors.

(C) Monetary civil penalties may be imposed in the manner prescribed by either local or state law.

(D) In addition, the Director may order specific performance of any actions required by this chapter or required by a franchise, license or permit, including the permit authorizing work to be performed in the right-of-way, or any other agreement or authorization.

(E) Prior to initiation of enforcement litigation, the User shall be given the opportunity to correct the violation within the timeframe specified by the Director.

§ 57.07 RIGHT-OF-WAY CONSTRUCTION

No person shall commence or continue with the construction, installation, maintenance or operation of facilities within the right-of-way in the City except as provided by the ordinances of the City and the directives of the City's Department of Public Works. All construction activity in City right-of-way will be in accordance with this ordinance.

§ 57.08 REGISTRATION AND CONSTRUCTION PERMITS

(A) Registration. In order to protect the public health, safety and welfare, all Users constructing, installing, maintaining or operating Facilities in the right-of-way will register with the Director. Registration and permits will be issued in the name of the entity that owns or will own the Facilities. Registration must be renewed before January 31 biennially after the effective date of this Ordinance. If a registration is not renewed and subject to thirty (30) days written notice, the Facilities of the User will be deemed to have been abandoned. When any information provided for the registration changes, the User will inform the Director in writing no more than thirty (30) days after the date the change is made.

Registration shall include:

(1) The name of the User of the right-of-way;

(2) The name, address and telephone number of people who will be contact person(s) for the User;

(3) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the User;

(4) The name(s) and telephone number of an emergency contact who shall be available 24 hours a day;

(5) Proof of insurance and bonds, as follows:

(a) An applicant must provide proof of liability insurance in the amount of six million dollars (\$6,000,000); one million dollars (\$1,000,000.00) primary plus five million dollars (\$5,000,000.00) umbrella or other securities as acceptable to the director.

(b) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.

(c) Each policy must include a cancellation provision in which the insurance company is required to notify the city in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.

(d) The applicant shall file, with the Director, the required original certificate of insurance showing the City as an additional insured prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.

(e) Applicant shall file a surety bond which will be valid prior to the commencement of any construction through two full years after the completion of the construction from a surety company authorized to do business in the State of Texas in the amount of the estimated amount of the value of the work to be performed that year to guarantee that the restoration of the right-of-way in the event the applicant leaves a job site in the right-of-way unfinished, incomplete or unsafe.

- (f) Proof of insurance requirements may be met by utilities with a current franchise or license agreement which provides for insurance or bonds at least in the amounts enumerated above, or where the current franchise or license agreement provides an indemnity in favor of the City.

(B) Application for Network Nodes/Support Poles. Application for network nodes and/or support poles and transport facilities shall comply with the Wireless Services Design Manual.

(C) Construction Permits

(1) No person shall perform any construction, maintenance or installation of Facilities, whether above-ground or underground, in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who owns or will own the Facilities to be constructed, maintained, repaired, or upgraded. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.

- (a) Emergency responses related to existing Facilities may be undertaken without first obtaining a permit; however the Director shall be notified in writing, on a form approved by the Director, within two business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the right-of-way and an updated map of any Facilities that were moved or repaired.
- (b) The phrase “construction, maintenance or installation of facilities” does not include the installation of facilities necessary to initiate service to a customer’s property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking or cutting of pavement; the closure of a nonresidential traffic lane; or excavation within the right-of-way or boring.
- (c) The phrase “construction, maintenance or installation of facilities” does not include micro network nodes that are strung on cables between existing poles or node support poles, in compliance with the National Electrical Safety Code unless such construction, maintenance, or installation requires closing of sidewalks or vehicular lanes in a public Right-of-Way.
- (d) The phrase “construction, maintenance or installation of facilities” does not include replacing or upgrading a network

node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalk or vehicular lanes in a public right-of-way.

(2) The permit shall state to whom it is issued, location of work, location of Facilities, dates and times of work is to take place and any other conditions set out by the Director.

(3) The person requesting a permit will provide the Director with documentation in the format specified by Director describing:

- (a) The proposed, approximate location and route of all Facilities to be constructed or installed and the applicant's plan for right-of-way construction.
- (b) Engineering plans at a scale not to exceed one inch (1") equals one hundred feet (100') unless otherwise approved by the Director.
- (c) Details of the location of all right-of-way and utility easements that applicant plans to use.
- (d) Details of all existing City utilities in relationship to applicant's proposed route.
- (e) Details of what applicant proposes to install, such as pipe size, number of interducts, valves, etc.
- (f) Details of plans to remove and replace asphalt or concrete in streets, driveways, alleys and sidewalks.
- (g) Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth.
- (h) Handholes and/or manholes typical of the type of manholes and/or handholes applicant plans to use or access.
- (i) Complete legend of drawings submitted by applicant. Applicant may submit a standard legend for all permit applications, provided the applicant submits updated or revised versions of the standard details.

- (j) Five sets of engineering plans must be submitted with the permit application.
 - (k) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
 - (l) The construction and installation methods and materials to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the right-of-way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Director.
 - (m) A statement that proof of insurance, bond or other required financial information is current and on file.
 - (n) A traffic control plan.
 - (o) Detailed emergency procedures and a list of "on-call" contacts.
 - (p) A statement of compliance with the NPDES stormwater permit requirements and other provisions of the federal Clean Water Act.
- (4) All construction and installation in the right-of-way shall be in accordance with the permit for the Facilities. The Director shall be provided access to the work and to such further information as he may reasonably require to ensure compliance with the permit.
- (5) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Director at all times when construction or installation work is occurring.
- (6) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the right-of-way User may request an extension from the Director.
- (7) A copy of any permit or approval issued by federal or state authorities for work in federal or state rights-of-way located in the City shall be maintained at the construction site and made available for inspection by the Director at all times when construction or installation work is occurring.

(8) A request for a permit, complete with all information required under this section, must be submitted at least ten (10) working days before the commencement of work proposed in the request, unless waived by the Director.

(9) The Director may require a pre-construction meeting with the right-of-way User and the User's construction contractor.

(10) Requests for permits will be approved or disapproved by the Director promptly after receiving all necessary information.

(11) Requests for installation of network nodes, node support poles and related ground equipment shall comply with the requirements within the city's Wireless Services Design Manual.

(D) Fees for Right – of – Way Use permits shall be in the amounts set forth in Chapter 31 of this Code to the extent allowable by law.

(E) Permits are not transferable to another User or another location.

§ 57.09 CONSTRUCTION STANDARDS

(A) No person shall construct or install, or cause to be constructed or installed, Facilities within the right-of-way which constitute a threat or hazard to public safety, either for vehicular or pedestrian traffic.

(B) Unless otherwise specifically allowed in writing by the Director, all excavations within the right-of-way shall be filled and compacted within twenty-four (24) hours of excavation and pavements of streets, alleys and sidewalks shall be completely restored within fourteen (14) days of excavation.

(C) The Director must be notified twenty four (24) hours in advance that construction is ready to proceed by either the right-of-way User or User's contractor or representative. Notification shall include the reference number assigned to excavation by the one-call system.

(D) All construction shall be in conformance with all City codes and applicable local, state and federal laws.

(E) Three feet by three feet information signs, stating the identity of the person doing the work on the Facilities, telephone number and User's identity and telephone number, shall be placed in the right-of-way on each approach to the location where construction is to occur twenty-four (24) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring.

(F) Erosion control measures and advance warning signs, markers, cones and barricades must be in place before work begins.

(G) Reflective barricades and flashing lights must be restored at the end of each day.

(H) Without affecting any contractual relationship between the User and its contractors, the right-of-way User shall be responsible for the workmanship and any damages by their contractors and subcontractors. A responsible representative of the User will be available to the Director at all times during construction.

(I) The right-of-way User shall be responsible for storm water management and erosion control that complies with city, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing in erosion areas until vegetation is restored, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing.

(J) User or User's contractor or subcontractor shall notify the Director immediately of any damage to other utilities, whether owned by City or privately owned.

(K) User must not interfere with City utilities, in particular gravity dependent Facilities.

(L) When a street, alley or sidewalk cut is required, prior approval must be obtained by the Director and all of the Director's requirements shall be followed. Repair of all street, alley and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

(M) Cutting or excavation of street, alley or sidewalk surfaces that are less than three (3) years old is prohibited, unless approved by Director.

(N) All directional boring shall have locator place bore marks and depths while bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem.

(O) Lane closures in school zones or on streets other than residential streets will be limited to after 8:30 a.m. and before 4:00 p.m. unless prior approval is obtained from the Director. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and reflector cones placed according to the specifications of the City's General Design Standards and Part 6 of the Texas Manual on Uniform Traffic Control Devices.

(P) Working hours in the rights-of-way not involving traffic lane closures are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work which must be performed before 7:00 a.m. or after 6:00 p.m. Monday through Friday must be approved by the Director in advance. Any work performed outside the above work hours must be approved twenty-four (24) hours in advance by the Director. Directional boring is permitted only Monday

through Friday 7:00 a.m. to 6:00 p.m., unless approved by the Director in advance. No work may be done, except for emergencies, on City holidays.

(Q) Users are responsible for obtaining line locations from all affected utilities at least forty-eight (48) hours prior to any excavation.

(R) Right-of-way User will be responsible for verifying both the horizontal and vertical location of all affected Facilities whether by pot holing, hand digging, or other method approved by the Director prior to any excavation or boring with the exception of work involving lane closures, as discussed above.

(S) Placement of all handholes, manholes or other access Facilities must be approved in advance by the Director.

(T) Installation of network nodes, nodes support poles and related ground equipment shall be in compliance with the city's Wireless Services Design Manual.

§ 57.10 "PLANS OF RECORD" PLANS

(A) Right-of-way Users will provide the Director with "plans of record" within thirty (30) days of completion of Facilities in the right-of-way.

(B) Users with existing Facilities in the rights-of-way as of the effective date of this ordinance shall submit within thirty (30) days of the effective date of this ordinance, a plan to provide complete plans of record in not more than three hundred (300) days after the effective date of this ordinance.

(C) The plans of record shall be provided to the City in the format specified by the Director and contain as much detail and accuracy as required by the Director. All the criteria specified for plans submitted for the initial permit will be required for the plans of record.

(D) Submittal of plans of record shall be in digital format as well as written.

(E) Right-of-way Users shall, not later than January 31 of each year, submit updated plans of record which incorporate all changes, additions, abandonments, and relocations of facilities completed in the previous calendar year. The annual update of the plans of record shall be in the format prescribed by the Director.

§ 57.11 CONFORMANCE WITH PUBLIC IMPROVEMENTS

Whenever by reason of reconstruction, widening or straightening of streets, replacement of water or sewer lines, traffic signals, traffic signs and markings or any other public works projects, it shall be deemed necessary by the Director to remove, alter, change, adapt, or conform the underground or overhead Facilities or network nodes of a right-of-way User, such alterations shall be made by the owner of the Facilities at the

owner's expense to the extent allowable by law, within ninety (90) days from issuance of notice to the User to make the alterations, unless a different schedule has been approved by the Director. Facilities not moved after thirty (30) days written notice or within the approved schedule shall be deemed abandoned.

§ 57.12 IMPROPERLY INSTALLED, REPAIRED, OR MAINTAINED FACILITIES

(A) Any User of the City right-of-way shall properly install, repair, upgrade and maintain Facilities.

(B) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:

(1) The installation, repair, upgrade or maintenance endangers public health, safety or welfare;

(2) The facilities encroach upon private property or extend outside the right-of-way location assigned by the City's General Design Standards;

(3) Above ground facilities located within the right-of-way are less than 1.5 feet from the face of curb, or within six (6) inches of a sidewalk;

(4) The Facilities do not meet the applicable state, federal, or local laws;

(5) The Facilities are not capable of being located or maintained using standard practices;

(6) The Facilities are placed in an area that interferes with another user's facilities. Nothing in this section shall diminish the authority of the Director to require specific placement of specific lines.

§ 57.13. TYPE OF FACILITIES

(A) The Director may require or approve the location of facilities underground.

(B) When poles are used, the type of poles, location, depth, upgrades; etc. shall be subject to the approval of the Director.

(C) The Director shall approve the size of Facilities to be installed or require User to prove its need to install any particular size of Facilities, which are the subject of User's request for a permit.

§57.14 RESTORATION OF PROPERTY

(A) Users with Facilities in the right-of-way shall restore property affected by construction, repair, maintenance, installation, or upgrade of Facilities to a condition that is equal to or better than the most recent specification of the City of Carrollton General Design Standards and Wireless Services Design Manual. Restoration must be approved by the Director.

(B) Restoration must be to the reasonable satisfaction of the Director. The restoration shall include, but not be limited to:

(1) Replacing all ground cover equal to the type of ground cover damaged during work or better either by sodding or seeding as required by Director;

(2) Installation of all manholes and handholes, as required;

(3) All bore pits, potholes, trenches or any other excavations shall be backfilled and compacted daily unless other safety requirements are approved by the Director;

(4) Street and sidewalk repair that conforms with the General Design Standards;

(5) Leveling of all trenches and backhoe lines;

(6) Restoration of excavation site to City's specifications;

(7) Restoration of all landscaping, ground cover, and sprinkler systems.

(8) Changes to nodes, poles, service poles, node support poles, or utility poles.

(C) All locate flags shall be removed during the clean up process by the User at the completion of the work.

(D) Restoration must be made in a timely manner and to the satisfaction of Director. If restoration is not satisfactory or not performed in a timely manner, then all of right-of-way User's work in progress, (except for that work related to the problem), will be halted and no other permit will be approved until all restoration is complete. The hold on right-of-way User's work will include work previously permitted but not complete.

§ 57.15 REVOCATION OR DENIAL OF PERMIT

If any of the provisions of this ordinance or Wireless Services Design Manual are not followed, a permit may be revoked by the Director. If a User has not followed the terms and conditions of this ordinance in work done pursuant to a prior permit, new permits may be denied or additional terms required when applicable.

Section 2

That Section 53.10 of Chapter 53, “Streets and Sidewalks” of Title V, “Public Works,” of the Carrollton City Code is hereby amended to read as follows:

§ 53.10 PERMIT REQUIRED

It shall be unlawful for any person, firm, or corporation to cut an open ditch or make a cut of any kind in or on any public street, alley, or roadway within the City limits without first obtaining a permit to do so from the Director of Public Works in accordance with the terms of this subchapter or of Chapter 57.

Section 3

That violations of this Ordinance shall be penalized in accordance with Section 10.99 of the Code of Ordinances, City of Carrollton, Texas.

Section 4

That all Ordinances or parts of Ordinances inconsistent or in conflict with this Ordinance shall be and are hereby repealed.

Section 5

That, save and except as amended by this Ordinance, all other Ordinances of the City of Carrollton, Texas shall remain in full force and effect.

Section 6


That the provisions of this Ordinance are severable in accordance with Section 10.07 of the Code of Ordinances, City of Carrollton, Texas.

Section 7

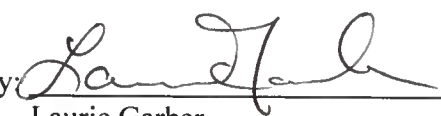
That this Ordinance shall become effective from and after the date of passage.

PASSED AND APPROVED on this the 15th day of August, 2017.

THE CITY OF CARROLLTON, TEXAS

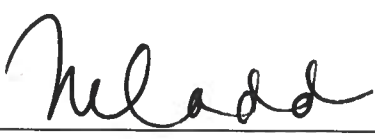
By: 
Kevin W. Falconer
Mayor

ATTEST:

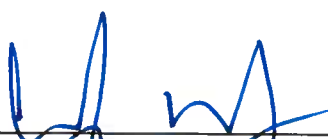
By: 
Laurie Garber
City Secretary



APPROVED AS TO FORM:


Meredith Ladd
City Attorney

APPROVED AS TO CONTENT:


Cesar J. Molina Jr., P.E.
Director of Engineering