

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTER 15-7 RELATING TO CITY-OWNED UTILITY INFRASTRUCTURE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Sections 15-7-1 (*Definitions*) is amended to read:

§ 15-7-1 DEFINITIONS.

(8) **UTILITY INFRASTRUCTURE** includes utility distribution poles, transmission structures, ducts, transmission and distribution conduit, building entry conduit, utility tunnels, manholes, vaults, radio towers, other radio equipment, fiber optic cable capacity and active communications capacity, poles and horizontal arms for street lights, poles and horizontal arms for traffic signals, and appurtenant facilities.

PART 2. City Code Section 15-7-3 (*Restrictions on Utility Infrastructure*) is amended to read:

§ 15-7-3 RESTRICTIONS ON UTILITY INFRASTRUCTURE.

- (A) The right to use utility infrastructure not granted by franchise. The right of a person to apply for or use utility infrastructure is governed by this chapter. The grant of a franchise under Article XI (Franchises and Public Utilities) of the City Charter is not a grant of attachment rights or authorization for the use of utility infrastructure without compliance with this chapter by a franchisee.
- (C) Priority of usage. The City has priority of use over competing uses of utility infrastructure to ensure, among other things, the electric utility's safe and reliable transmission and distribution of electricity to its customers [~~has priority over competing uses of utility infrastructure~~].
- (D) Reservation and restrictions.
- (1) The utility retains the exclusive use of transmission structures, the electric supply area on distribution poles, and the conduit or conduit bank used for electric utility purposes or terminating in an electric service vault or manhole. The director may permit third party use of reserved utility infrastructure upon the terms and conditions determined by the director.
- (2) This chapter does not authorize a person to use [of] utility's electric transmission and distribution lines, facilities, or electric grid to transport electricity under a wheeling or other arrangement.

- 1 (3) The director may determine that certain classes of utility infrastructure or
2 specific units of utility infrastructure are necessary for utility's exclusive use
3 due to legal, mechanical, structural, safety, environmental, service, or other
4 requirements, and are unavailable for use by another person.
- 5 (4) Some utility infrastructure is located on dedicated electric utility easements,
6 which by their terms, limit the use of the easement to the utility for the
7 transmission and distribution of electricity and do not authorize other uses,
8 including telecommunications service. This chapter does not grant a third
9 party right to use a dedicated easement without the prior consent of the
10 grantor of the easement or its successor. Additional cost or expense to
11 obtain the use of a dedicated easement by a user or applicant shall be borne
12 solely by the user or applicant.
- 13 (5) Utility infrastructure is the property of the City and a payment made by a
14 user does not create a right, title, or interest in utility infrastructure for the
15 use.
- 16 (6) This chapter does not require the utility to replace, upgrade, or alter existing
17 utility infrastructure to create additional capacity for an attachment.

18 **PART 3.** City Code Section 15-7-4 (*Fees and Charges*) is amended to add a new
19 Subsection (D), to read:

20 **§ 15-7-4 FEES AND CHARGES.**

- 21 (D) Any attachment that the city manager determines is used exclusively for the
22 delivery of services to the public will not be subject to the established filing and
23 usage fees so long as the services are non-discriminatory and provided free of
24 charge.

25 **PART 4.** City Code Section 15-7-5 (*Application to Use Utility Infrastructure*) is
26 amended to read:

27 **§ 15-7-5 APPLICATION TO USE UTILITY INFRASTRUCTURE.**

- 28 (A) Authorized user. Unless otherwise required by law, only a person who holds a
29 valid [City] franchise or license to use or cross a City street, highway, or right-of-
30 way will be granted an attachment right on utility infrastructure. An applicant's use
31 of utility infrastructure is limited to the purposes specified in the applicant's
32 franchise or license. An attachment used for a purpose not authorized by an
33 applicant's franchise or license is an unauthorized attachment. A person who
34 applies to use utility infrastructure for a private purpose may not be granted an
35 attachment right.

1 (E) Infrastructure usage contract.

- 2 (1) The city attorney and the utility shall develop an infrastructure usage
3 contract under this chapter.
- 4 (2) An infrastructure usage contract must be approve and executed before an
5 applicant or user may undertake work or make an attachment on utility
6 infrastructure.
- 7 (3) An applicant or user must pay the usage charges for the initial contract year
8 in advance when the applicant executes the contract.
- 9 (4) If the annual usage charges to be paid to the city under an infrastructure
10 contract are within the city manager's authority granted by Section 15
11 (Purchase Procedure) of Article VII of the City Charter, the director may
12 execute the contract. If the annual usage charges exceed the amount
13 specified in Section 15 (Purchase Procedure) of Article VII of the City
14 Charter, the contract must be approved by the city council.
- 15 (5) A user may not change the number, kind, location of attachments, the
16 method of construction or installation, or the use of the attachments
17 authorized under an infrastructure usage contract without the prior written
18 consent of the director, which shall not be unreasonably withheld. The
19 director's denial or approval of an individual permit or attachment is
20 governed exclusively by the terms of the infrastructure usage contract, and
21 may not be appealed under Section 15-7-8 (Appeal to the City Council). An
22 infrastructure usage contract shall:
- 23 (a) identify and establish procedures to permit the number, kind and
24 location of attachments that the user may place on utility
25 infrastructure;
- 26 (b) the method of construction or installation of user's attachments; and
- 27 (c) the authorized use of the attachments by user.
- 28 (6) [~~The City's termination~~] Termination, [~~or~~] revocation, or expiration of a
29 user's franchise or license to use a City street, highway, or right-of-way
30 automatically terminates the user's attachment rights without further action
31 by the City or notice to user.

32 **PART 5.** A new City Code Section 15-7-10 (*Use of Adjacent City Land*) is added, to
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