

ORDINANCE NO. 20130328-026

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. Subsections (A), (C), and (D) of City Code Section 15-7-3 (*Restrictions on Utility Infrastructure*) are 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.

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

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

§ 15-7-4 FEES AND CHARGES.

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

PART 4. Subsections (A) and (E) of City Code Section 15-7-5 (*Application to Use Utility Infrastructure*) are amended to read:

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

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

(E) Infrastructure usage contract.

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

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

§ 15-7-10 USE OF ADJACENT CITY LAND.

- (A) The city manager may grant a license to a user for the use of property owned, leased, or controlled by the City for the location of user's equipment, provided the city manager determines that the property is available and that:
- (1) the property is adjacent to utility infrastructure upon which the user has an attachment right, and
 - (2) the property's use is for locating equipment functionally necessary for the user's adjacent attachment.
- (B) The term of the license granted under the authority of this section will run concurrently with the term of the related attachment right.
- (C) The discretion whether to grant a license under this section is not subject to appeal under Section 15-7-8 (*Appeal to City Council*).

PART 6. This ordinance takes effect on April 8, 2013.

PASSED AND APPROVED

_____, March 28, 2013

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Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk