



Draft* SPECIAL MEETING MINUTES *Draft

City Council – City Of Quitman, Texas

Monday, August 28, 2017, 6:00PM

City Council Chambers, City Hall - 401 E Goode Street, Quitman, TX

Council Present: David Dobbs, Mayor; Randy Dunn, Mayor Pro-Tem; Susan Resnik, Alderman; Brad Medlin, Alderman and Jack Robinson, Alderman.

Council member absent: Kevin Gilbreath, Alderman.

Staff Present: Jim McLeroy, City Attorney, Greg Hollen, City Secretary / Administrator and Sheryl Laudenslager, Finance Clerk.

Mayor Dobbs called the meeting to order at 6:01 PM.

Mayor Pro-Tem Dunn gave an invocation and Alderman Robinson led the recitation of the United States Pledge and Alderman Medlin led the Texas Pledge.

Item 1 Citizen Comments None

Item 2 Mayor Comments

Mayor Dobbs thanked everyone for attending the special city council meeting and noted that Alderman Gilbreath was unable to attend do to a travel commitment. He mentioned that following the two agenda items the city council would go into executive session for the purpose of conducting interviews for the city secretary / administrator position. He expressed confidence that all four (4) finalists would be strong candidates and make solid contributions to the city.

AGENDA ITEMS

Item 3 Jim McLeroy provided an overview of the Texas state legislature's actions regarding city right of way laws, including an overview of SB 1004. (See O082817(B) below).

ORDINANCES

(item 4) O082817(A) ORDINANCE 0082817(01)

City Attorney Jim McLeroy read the following statement into the record regarding this Ordinance:

“DISCUSSION/ACTION ON FIRST READING OF ORDINANCE NO. 0082817, AN ORDINANCE AMENDING CHAPTER 94 OF THE CITY OF QUITMAN CODE OF ORDINANCE ENTITLED STREETS AND SIDEWALKS, BY ADDING ARTICLE II ENTITLED RIGHT OF WAY MANAGEMENT AND ARTICLE III ENTITLED WIRELESS INFRASTRUCTURE MANAGEMENT, REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS- OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.”

McLeroy stated that this is the city's action necessary to implement Senate Bill (SB) 1004 in Quitman. He shared legislative lobbying activity by AT&T and other groups interested in state of Texas legislation to provide them with municipal access to certain "right of ways", to install/implement next generation technologies (different frequencies) in this field. He provided further information regarding the requirement that municipalities have until September 1, 2017 to enact Ordinances to clarify their local codes in this matter and create related processes for those organizations interested in erecting wireless cell towers to follow. General discussion was held regarding the improvement of services with these types of new technology.

Alderman Resnik made a motion to Approve, Mayor Pro tem Dunn seconded the motion. The motion passed unanimously.

RESOLUTIONS

Item 5 R082817 (A) Resolution authorizing Pilot Club permit for beer & wine at Civic Center
City Secretary / Administrator Hollen provided an overview of this requirement to provide city council approval for any temporary TABC license request for use of the Carroll green Civic Center (CGCC). He noted that this request is identical to the one approved last year for the Quitman Pilot Club's annual Extravaganza, to be held there September 30, 2017.

Alderman Medlin made a motion to Approve, Alderman Robinson seconded the motion. The motion passed unanimously.

An additional request was made in this matter for consideration of a further resolution to allow the Mayor and city secretary / administrator to review and potentially approve future temporary TABC requests at the CGCC, without having to bring forth a resolution to the city council. There was general agreement in support of this approach and a Resolution will be placed on September 21, 2017 City Council Agenda for further discussion and consideration.

Alderman Resnik made a motion to Adjourn and move into Executive Session, Mayor Pro tem Dunn seconded the motion. The motion passed unanimously.

MEETING ADJOURNED AT 6:16 PM

City Council emerged from Executive Session at 8:34PM and took no further action.

Note: City Council will reconvene at the posted date and time of Tuesday, August 29, 2017, at 6:00 PM at city hall, for the purpose of continuing the interviewing of city secretary/administrator candidates and entertaining possible action related to hiring for the role.

Alderman Robinson made a motion to Adjourn, Alderman Medlin seconded the motion. The motion passed unanimously.

(ALL ITEMS ARE POSTED FOR DISCUSSION AND ACTION UNLESS OTHERWISE NOTED)

THE CITY COUNCIL OF THE CITY OF QUITMAN RESERVES THE RIGHT TO RECESS THE MEETING AND CONDUCT AN EXECUTIVE SESSION AT ANY TIME DURING THE COURSE OF THIS MEETING TO DISCUSS ANY OF THE MATTERS LISTED, AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE SECTION 551.071-551.088.

ADJOURN

I HEREBY CERTIFY THAT THESE MINUTES ARE A TRUE AND CORRECT RECORD OF THE ITEMS CONSIDERED AND ACTION TAKEN AT THIS MEETING AND THAT THESE MINUTES HAVE BEEN APPROVED AS TRUE AND CORRECT AND THAT AN EXECUTED COPY IS ON FILE WITH THIS OFFICE.



Gregory D. Hollen
City Secretary / Administrator

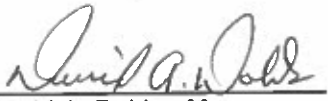
ORDER 0082817(01)

DISCUSSION/ACTION ON FIRST READING OF ORDINANCE NO. 0082917, AN ORDINANCE AMENDING CHAPTER 94 OF THE CITY OF QUITMAN CODE OF ORDINANCE ENTITLED STREETS AND SIDEWALKS, BY ADDING ARTICLE II ENTITLED RIGHT OF WAY MANAGEMENT AND ARTICLE III ENTITLED WIRELESS INFRASTRUCTURE MANAGEMENT, REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF QUITMAN, TEXAS THIS 28th DAY OF AUGUST, 2017.

IN WITNESS WHEREOF WE HEREBY AFFIX OUR SIGNATURES HERETO ON THIS 28th DAY OF AUGUST, 2017.

APPROVED:


David A. Dobbs, Mayor

ATTEST:


Gregory D. Hollen, City Secretary / Administrator



CITY OF QUITMAN, TEXAS

ORDINANCE NO. 2711

ORDINANCE NO. 2711, AN ORDINANCE AMENDING CHAPTER 94 OF THE CITY OF QUITMAN CODE OF ORDINANCE ENTITLED STREETS AND SIDEWALKS, BY ADDING ARTICLE II ENTITLED RIGHT OF WAY MANAGEMENT AND ARTICLE III ENTITLED WIRELESS INFRASTRUCTURE MANAGEMENT, REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.

WHEREAS, the City of Quitman, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

WHEREAS, Chapter 284 of the Texas Local Government Code (“the Code”) allows certain wireless network providers to install in the City’s public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles;” and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City has enacted a *Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) in

order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Council desires to regulate the installation of Network Nodes and Network Support Poles pursuant to Chapter 284 of the Code in a way that is fair, reasonable and nondiscriminatory; and

WHEREAS, the City Council of the City of Quitman has approved and recommends that the Code of Ordinances be amended by deleting the current text of each code section or subsection referenced below and substituting in each such provisions place the language set forth herein, including Section or Subsection headings where so indicated, as follows:

NOW THEREFORE BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF QUITMAN, TEXAS, that the Code of Ordinances is hereby amended by amending Chapter 94 of the City of Quitman Code of Ordinance Entitled Streets and Sidewalks, by adding Article II entitled “Right of Way Management” and Article III entitled “Wireless Infrastructure Management” by adding the language set forth below, including Section or Subsection headings where so indicated and by designating existing Sections 94.01-94.10 as Article I entitled “Culverts” and Sections Section 94.99 as Article IV entitled “Penalty”.

SECTION I
FINDINGS OF FACT

The forgoing recitals are incorporated into this Use of Public Right-of-Way Ordinance as findings of fact.

SECTION II.
USE OF PUBLIC RIGHTS-OF-WAY

ARTICLE II.

USE OF PUBLIC RIGHT-OF-WAY

DIVISION 1. - IN GENERAL

Sec. 94.11. - DEFINITIONS.

In this article:

Director means the City Secretary/Administrator or any other person designated by the him/her to administer this article.

Public right-of-way means the land below, above, and at the surface of any public street, highway, alley, sidewalk, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control.

Sidewalk means that portion of a public right-of-way improved and designated for or ordinarily used for pedestrian travel.

Street means that portion of a public right-of-way improved and designated for or ordinarily used for vehicular traffic.

Sec. 94.12. - CONSENT REQUIRED.

It is unlawful for any person to construct, place, maintain, or operate any line, wire, pipe, conduit, equipment, structure, or facility in a public right-of-way or other public property owned or controlled by the City for the purpose of providing water, wastewater, electrical, natural gas, telephone, telecommunications, cable television, or other service to any person, without first receiving the consent of the City Council. The City Council may, as a condition of its giving its consent, require the person requesting such use to enter into a written agreement with the City containing the conditions under which the use of the public right-of-way will be permitted.

Sec. 91.13. - INSURANCE REQUIREMENTS.

Any person required under this Code to obtain the City's consent to make use of the public right-of-way or any person required by this chapter to obtain a permit to perform construction in the public right-of-way must, during the period of the use or work, obtain and keep in effect insurance against claims for injuries to persons or damages to property arising from or in connection with the performance of the work, comprehensive general liability and property damage insurance with minimum limits of \$500,000.00 for the injury or the death of any one person, \$1,000,000.00 for each occurrence, and \$100,000.00 for each occurrence of damage to or destruction of property.

Sec. 94.14. - RELOCATION OF FACILITIES.

Within 60 days following written notice from the City, any person owning facilities located in the public right-of-way, must, as directed by the City, temporarily or permanently remove, relocate, change or alter the position of any of their facilities that are in the public right-of-way whenever the City determines that the removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any City improvement, facilities, or equipment, in or upon the public right-of-way.

Sec. 94.15. - UNAUTHORIZED USE OF PUBLIC RIGHT-OF-WAY.

It is unlawful for any person to knowingly place any facilities or equipment in a public right-of-way or make use of the public right-of-way for any purpose not authorized by the City in

accordance with this article or other City ordinances. Each unauthorized use is a separate offense. And each day a violation continues is a separate offense.

Secs. 94.16 through 94.20. - Reserved.

DIVISION 2. - CONSTRUCTION IN RIGHT-OF-WAY

Sec. 94.21. - PERMIT REQUIRED AND EXCEPTIONS.

- (a) It is unlawful for any person to dig up, break up, cut, excavate, drill, or tunnel in or upon any public right-of-way, sidewalk, or street, or to place any earth or excavated material on a public right-of-way, sidewalk, or street without first obtaining a right-of-way work permit from the City. If emergency work in the right-of-way that would require a permit is necessary and the City permit office is closed, the person doing the work must apply for a permit the next business day after the emergency work.
- (b) The permit requirements of this section do not apply to:
 - (1) The repair, replacement, or maintenance of an existing telephone line, natural gas line, electric line, cable television or telecommunications line, irrigation line, or other existing pipe, cable, or facility lawfully located in the public right-of-way, if the repair, replacement, or maintenance does not require the digging up, breaking up, cutting, excavation, drilling or tunneling under or the removal, modification, or excavation of a public street, sidewalk, water or sewer line, or other City-owned improvement;
 - (2) The repair, replacement, or maintenance of existing trees, shrubs, flowers, grass, vegetation, berms, decorative landscaping, or watering systems lawfully located in the public right-of-way, or to existing ornamental gates, columns, signs, or other ornamental features or materials denoting the entrance to a neighborhood or subdivision if lawfully located in a public right-of-way and if the repair, replacement, or maintenance does not require the digging up, breaking up, cutting, excavation, drilling or tunneling under or the removal, modification, or excavation of a public street, sidewalk, water or sewer line, or other City-owned improvement;
 - (3) Any work performed for the City under a contract with the City;
 - (4) Any work required to install a sign on a public right-of-way if the applicant has received a sign permit from the City and has complied with the requirements of this article; or
 - (5) The placement or maintenance of trees, shrubs, irrigation systems, or other landscaping materials or equipment placed in the right-of-way of a residential lot at the direction of the owner or person in control of the lot.

Sec. 94.22. - APPLICATION AND ISSUANCE OF PERMITS.

- (a) A completed application for a permit must be submitted to the City on a City form, accompanied by the applicable fee. The application may require information, including plans, that the director determines is reasonably necessary to administer this article and to protect the public and public property along with applicable construction and engineering drawings and information to confirm that the applicant will comply with

(b) The permit will be issued if the application complies with the provisions of this article. The permit must contain the name, address, and telephone number of the person performing the work, the location of the work, and any other information designated by the director. The permit may also contain special conditions the director determines are necessary to insure compliance with this article or to protect the public and public property. It is unlawful for any person doing work under a permit to violate any special condition or other provision of the permit.

(c) The permit holder must keep the permit posted at a visible place at the work site and make it available for inspection upon the request of any City employee.

(d) A permit issued under this article is valid for the time period specified by the director, based on the estimated time to complete the work. Upon the written request of the permit holder, the director may grant additional time to complete the work under the permit.

Sec. 94.23. - STOP WORK ORDERS; REVOCATION AND APPEALS.

(a) If a person violates a provision of this article, the director may issue a written stop work order to the violator directing any work or activity authorized to be done under a permit to cease until the violation is corrected. Upon receiving a stop work order, the permit holder must immediately cause all work authorized under the permit to stop, but may take steps necessary to secure the site. It is unlawful for any person to continue work under a permit after receiving a stop work order or receiving notice that a stop work order has been issued or to resume the work or activity until the director withdraws the stop work order.

(b) The director may revoke a permit for a violation of this article. To revoke a permit the director must send or deliver written notice of a violation to the permit holder ordering the violation to be corrected within a specified time. If the permit holder fails to correct the violation as directed, the director may revoke the permit by giving notice to the permit holder in writing.

(c) Any person may appeal the denial or revocation of a permit, the interpretation or application of a requirement of this article, the issuance of a stop work order or notice of violation, or other requirement or action imposed under this article by the director. The appeal must be submitted in writing to the City Manager or the City Manager's designee within 72 hours of the action being appealed. The City Manager or designee will promptly review the facts and issue a written determination.

(d) The revocation and appeal provisions in this section govern over any other conflicting provision in this Code.

Sec. 94.24. - REGULATIONS AND REQUIREMENTS.

Any person performing any construction or other work in the public right-of-way, whether under a permit issued under this chapter or otherwise, must comply with the following regulations and requirements:

- (1) *Specifications.* All excavations, alterations, backfill, repairs, and other work must be made in conformance with any written specifications or requirements adopted by the City. The director may allow modifications of a specification if unusual circumstances

are present, the modifications would comply with the spirit and intent of the specification, and the modification would not adversely affect the public safety or interest.

- (2) *Boring and encasing.* If the director determines it is impractical to excavate within a street, all pipelines, conduits, or other crossings must be bored, tunneled, or drilled under the paved section, and, if required by the director, the crossings must be encased in a manner approved by the director.
- (3) *Damage to City streets.* Any type of ditching equipment used on City streets must be equipped with street pads. All damage done to public property during the work must be repaired by the permit holder to City specifications. If the permit holder fails to make the repairs, the director may make the repairs and charge the cost to the permit holder.
- (4) *Correction of defects.* If a permit holder fails to properly restore the surface of the public right-of-way, abandons the work, or fails to correct a hazardous condition after notice to do so, the director may take any action necessary to restore the right-of-way, complete the work, or correct the hazardous condition at the permit holder's expense.
- (5) *Bonds.* For good cause, the director may require as a condition to the issuance of a right-of-way work permit or before work begins under the permit, that the applicant or permit holder post a bond to insure the repair of streets or the completion of the proposed work or to insure compliance with any other requirement of this article.
- (6) *Debris on public rights-of-way.* During the work, the public right-of-way must be kept clean of excessive rubbish, earth, mud, rock, and other debris, to the satisfaction of the director.
- (7) *Traffic safety.* All work in a public right-of-way or adjacent to a roadway must be done with barricades, traffic cones, lights, flares, signs, flagmen, and other traffic control devices as specified in the latest edition of the Manual for Uniform Traffic Control Devices of the Texas Department of Transportation. Where the director believes it necessary to avoid traffic congestion or for public safety, he may require work be done only at certain hours during the day or night. Any excavation in the public right-of-way that is a potential danger to the public must be secured against entry in the manner specified by the director.

Secs. 94.25 through 94.30. - Reserved.

ARTICLE VI

PUBLIC RIGHT OF WAY USE FOR INSTALLATION AND MAINTENANCE OF WIRELESS INFRASTRUCTURE

Sec. 94.31 PURPOSE.

The purpose of this chapter is to:

(A) Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy and maintenance of its public rights-of-way by wireless network providers;

(B) Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and

(C) Assist the City in protecting the public health, safety, and welfare.

Sec. 94.32 GOVERNING LAW.

This chapter shall be construed in accordance with Chapter 284 of the Texas Local Government Code (“the Code”) to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

Sec. 94.33 DEFINITIONS.

For the purpose of this chapter, the definitions found in the *City Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) are hereby incorporated into this chapter and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this chapter:

Applicable codes means:

- (A) the City uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Quitman, Texas or its lawful successor.

City Council means the municipal governing body of the City of Quitman, Texas.

Chapter 284 means Texas Local Government Code, Chapter 284.

Code means the Texas Local Government Code.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a public right-of-way on or adjacent to a pole.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory City codes and ordinances.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City-approved and lawfully permitted location for the Network Node.

Mayor means the mayor of the City of Quitman, Texas, or designee.

Micro network node means a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

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 service provider:
 - (i) Network Nodes; or
 - (ii) Node Support Poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a Network Node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, City-owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-

way may include sidewalks and utility easements. A "Street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for network nodes.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code, Chapter 284.

Other terms used here, but not defined here shall have the meanings provided in Sec. 21-64 of the Municipal Code of the City of Quitman, Texas.

Sec. 94.34 USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY.

Pursuant to this chapter and subject to the Design Manual and the Code, a wireless network provider has the nonexclusive right to use and occupy the public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless facilities.

The terms of this chapter shall apply to all wireless network providers' facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later.

Sec. 94.35 COMPLIANCE WITH DESIGN MANUAL AND APPLICABLE CODES.

All wireless network providers shall comply with the terms of this right-of-way management ordinance, City applicable codes, and the terms and conditions of the City's Design Manual.

Sec. 94.36 GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS.

A network provider shall construct and maintain Network Nodes and Network Support Poles described in the Code in a manner that does not:

- (A) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- (B) Obstruct the legal use of a public right-of-way by other utility providers;
- (C) Violate nondiscriminatory applicable codes;
- (D) Violate or conflict with the City's publicly disclosed public right-of-way design specifications; or
- (E) Violate the federal Americans with Disabilities Act of 1990 (ADA).

Sec. 94.37 PERMIT APPLICATIONS.

(A) Except as otherwise provided in Chapter 284 of the Code, a network provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public right-of-way.

(B) As required by Chapter 284 of the Code, the City shall not require a network provider to perform services for the City for which the permit is sought.

(C) A network provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.

(D) The network provider shall provide the following information in its permit applications:

- (1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's Design Manual and applicable codes;
- (2) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this chapter;
- (3) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not

later than the 60th day after the date of construction and final testing of each Network Node is completed.

- (4) A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage.

(E) **Exception:** As provided in Section 284.157 of the Code, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:

- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or
- (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code;
- (4) Notwithstanding Subdivision (D) above, the network provider or its contractors shall notify the City at least 24 hours in advance of work described in this Subdivision (D).

Sec. 94.38 INSTALLATION IN HISTORIC DISTRICTS OR DESIGN DISTRICTS

A network provider must obtain advance written consent from the Director before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Design Manual. The City has the authority to designate new historic districts and design districts at a future date.

Sec. 94.39 INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS

A network provider may not install a new Node Support Pole in a public right-of-way without the Director's discretionary, nondiscriminatory and written consent if the public right-of-way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
 - i. Not more than 50 feet wide; and

- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (3) In addition to the above, a network provider installing a Network Node or Node Support Pole in a public right-of way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.
- (4) The network provider shall be further required to comply with guidelines set out in the City's Design Manual.

Sec. 94.40 MUNICIPAL REVIEW PROCESS BY THE CTIY.

(A) **Determination of Application Completeness:** The Director shall determine whether the permit application is complete and notify the applicant of that determination:

- (1) *For Network Nodes and Note Support Poles:* no later than 30 days after the date the City receives the permit application.
- (2) *For a Transport Facility:* no later than 10 days after the date the City receives the permit application.

(B) **Approval or Denial of Application:** The Director shall approve or deny a completed application after the date it is submitted to the City:

- (1) *For Network Nodes:* No later than 60 days after the date the City receives the complete application.
- (2) *For Network Support Poles:* No later than 150 days after the date the City receives the complete application.
- (3) *For Transport Facilities:* No later than 21 days after the City receives the complete application.

(C) **Basis for Denial of Application:** If an application is denied by the Director, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.

(D) **Resubmission of Denied Application:** The applicant may cure the deficiencies identified in the denial application.

- (1) The applicant has 30 days from the date the Director denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the City.
- (2) The Director shall approve or deny the revised completed application after a denial not later than the 90th day after the City receives the revised completed application. The Director's review shall be limited to the deficiencies cited in the denial documentation.

(E) **Nondiscriminatory Review:** Each completed application shall be processed by the Director on a nondiscriminatory basis.

Sec. 94.41 TIME OF INSTALLATION.

A network provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. The Director may in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

Sec. 94.42 APPLICABLE FEES AND RENTAL RATES TO THE CITY.

(A) As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.

(B) Network Nodes:

- (1) **Application Fee:** The application fee shall be \$100.00 for each Network Node for up to but not more than 30 Network Nodes.
- (2) **Annual Public Right-of-Way Rate Fee:** The annual public right-of-way rate shall be \$250.00 per Network Node installed in the City public rights-of-way.

(3) **Public Right-of-Way Rate Adjustment:** As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice.

(C) Node Support Poles:

(1) The application fee for each Network Support Pole shall be \$100.00.

(D) Transfer Facilities:

(1) The application fee for each Transfer Facility shall be \$100.00.

(2) The annual Transfer Facility rental rate shall be \$28.00 monthly for each Network Node site located in a public right-of-way. However, no rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

(E) Micro Network Nodes:

(1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.

(F) Collocation of Network Nodes on Service Poles

(1) Subject to the City's Pole Service Agreement, the collocation of Network Nodes on City service poles shall be at a rate of \$20.00 per year per service pole.

(G) City-Owned Municipal Utility Poles:

(1) A network provider shall pay an annual pole attachment rate for the collocation of a Network Node supported by or installed on a City-owned utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

(H) The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of the public rights-of-way for use of the public rights-of-way.

Sec. 94.43 INDEMNITY.

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions ("claims") covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

Sec. 94.44 EFFECT ON OTHER UTILITIES AND TELECOMMUNICATION PROVIDERS.

Nothing in this Ordinance shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

**SECTION III.
APPROVING DESIGN MANUAL**

The form of "Design Manuel for the Installation of Network Nodes and Node Support Poles" attached hereto is approved and adopted, and may be modified in future by resolutions of the City Council of the City of Quitman.

**SECTION IV.
REPEALING ALL ORDINANCES IN CONFLICT**

All other ordinances or parts of ordinances inconsistent or in conflict herewith, or to the

extent of such inconsistency or conflict are hereby repealed.

**SECTION IV.
SAVINGS CLAUSE**

This City Council of the City of Quitman, Texas does hereby declare that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

**SECTION V.
COMPLIANCE WITH OPEN MEETINGS ACT**


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

**SECTION VI.
EFFECTIVE DATE.**

This Ordinance shall become effective on September 1, 2017.

IT IS SO ORDAINED.

PASSED AND APPROVED on the 23 day of August 2017.



David Dobbs, Mayor

ATTEST:



Greg Hollen, City Secretary/Administrator

**PILOT CLUB FALL EXTRAVAGANZA PERMIT TO SERVE BEER AND WINE
CIVIC CENTER – QUITMAN, TX
RESOLUTION 082817(A)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF QUITMAN, TEXAS
AUTHORIZING THE PILOT CLUB OF QUITMAN TO SERVE BEER AND WINE AT THEIR FALL
EXTRAVAGANZA EVENT**

WHEREAS, the Pilot Club of Quitman is holding a Fall Extravaganza with paid admission,

WHEREAS, the Fall Extravaganza will be held at the Civic Center which allows beer and wine beverages,

WHEREAS, per TABC rules, where admission is charged, property owners must give permission to serve beer and wine, and to acquire a permit,

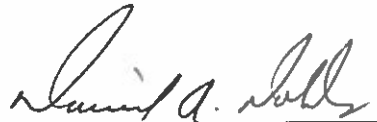
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF QUITMAN, TEXAS, THAT:

The City Council authorizes the Pilot Club to serve beer and wine at this event on 30th day of September, 2017.

PASSED BY THE CITY COUNCIL OF THE CITY OF QUITMAN, TEXAS THIS 28TH DAY OF AUGUST, 2017.

IN WITNESS WHEREOF WE HAVE AFFIXED OUR SIGNATURES HERETO THIS 28TH DAY OF AUGUST, 2017.

APPROVED:



David A. Dobbs, Mayor

ATTEST:



Gregory D. Hollen, City Secretary/Administrator