

**CITY OF SEABROOK  
ORDINANCE NO. 2017-31**

**ADDING "USE OF PUBLIC RIGHT-OF-WAY" TO THE CITY OF  
SEABROOK CODE OF ORDINANCES**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, TEXAS, CHAPTER 75, "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", BY ADDING A NEW ARTICLE III ENTITLED "USE OF PUBLIC RIGHT-OF-WAY", IN ORDER TO ADMINISTER AND REGULATE THE USE OF PUBLIC RIGHTS-OF-WAY FOR THE PUBLIC INTEREST, HEALTH, SAFETY AND WELFARE; PROVIDING FOR THE ISSUANCE AND REGULATION OF PERMITS; ESTABLISHING FEES; PROVIDING FOR A PENALTY IN AN AMOUNT NOT TO EXCEED \$500 PER OFFENSE FOR VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.**

**WHEREAS**, in accordance with applicable federal regulations, including, but not limited to 47 U.S.C., Section 253(c) and state laws, including, but not limited to, Texas Utility Code, Section 14.008 and Section 54.205, Texas Civil Statutes, Article 1175(2) and the Local Government Code, Section 283.056, the City seeks to exercise its rights to control and manage its public right-of-way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations in the use of those public rights-of-way ; and

**WHEREAS**, Chapter 284, Tex. Local Government Code, allows wireless facilities to be installed in the City's public rights-of-way subject to the provisions of that Chapter; and

**WHEREAS**, regulation of excavations in City streets and rights-of-way helps reduce disruption of and interference with public use of the streets, helps prevent pavement and City utility damage, and helps maintain the safe condition of the streets; and

**WHEREAS**, the City Council desires to amend the City's ordinances in conformity with Chapter 284, Tex. Local Government Code, by adding provisions regarding the installation, operation and maintenance of wireless facilities in the City's public right-of-way; and

**WHEREAS**, this ordinance is necessary to protect the health, safety and welfare of the public;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS, THAT:**

**Section 1. FINDINGS OF FACT.**

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

**Section 2. AMENDMENT TO THE CODE.**

The Seabrook City Code of Ordinances, Chapter 75, "Streets, Sidewalks and Other Public Places", is hereby amended by adding a new Article III entitled "Use of Public Right-of-Way", as specifically provided hereafter:

**"ARTICLE III. - USE OF PUBLIC RIGHT-OF-WAY**

**DIVISION 1. - IN GENERAL**

**Sec. 75-30. - Definitions.**

**In this article:**

**Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 90 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.**

**Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.**

**Applicable codes mean the most current building, electrical, mechanical, plumbing and fire codes codified in Chapter 18, or related Chapters/ provisions of the City's Ordinances and as amended therein.**

**Cable service is defined in 47 U.S.C. Section 522(6).**

**Cable service provider means a person who provides cable service and has been issued a state-issued certificate of franchise authority from the Public Utility Commission of Texas or its successor under Chapter 66, Tex. Util. Code.**

**Certificated Telecommunications Provider has the meaning as set forth in Section 283.002(2), Tex. Local Government Code, for which the PUC has issued a certificate of operating authority or service provider certificate of operating authority to provide local exchange telephone service or voice service.**

**Chapter 284 means Tex. Loc. Gov. Code, Chapter 284.**

**City Manager shall mean City Manager or designee.**

Collocate and collocation means the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may included, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

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 pursuant to this article.

Design Manual means the Design Manual for Siting and Criteria for the Installation of Wireless Micro Network Nodes, Network Nodes, Node Support Poles and Related Ground Equipment Pursuant to Chapter 284, Tex. Local Government Code.

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.

Distributed Antenna System or DAS shall be included as a type of "Network Node".

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.

Facilities means a pole, conduit, pipeline, line, wire, equipment, antenna, structure, or facility of any kind whatsoever, and includes Utility Poles, Transport Facilities, Micro Network Nodes, Network Nodes, Node Support Poles, and related ground equipment.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable televisions and other multi-channel regulations 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.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City.

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 municipal code or by use as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

MUTCD means Manual of Uniform Traffic Control Devices.

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 a municipality 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, municipally 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.

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 municipality 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.

Public property means public rights-of-way, bridges, tunnels, and similar property in which the city holds any property interest or exercises any rights of management or control.

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 municipality 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.

Public right-of-way rate means the annual rental charge paid by a network provider to the city related to the construction, maintenance, or operation of network nodes within the public right-of-way, as provided in the code of ordinances Appendix B entitled Master Fee Schedule .

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality 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.

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

Small cell shall be included as a type of “Network Node”.

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.

Substantially similar means that the:

- (1) New or upgraded network node, including the antenna or other equipment element, will not be more than 10% larger than the existing network node, provided that the increase may not result in the network node exceeding the size limitation; and
- (2) New or upgraded pole will not be more than 10% higher than the existing pole, provided that the increase may not result in the pole exceeding the height limitations.

The determination of whether a replacement or upgrade is substantially similar under (1) and (2) is made by measuring from the dimensions of the network node or node support pole, as provided in the Design Manual.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

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.

Underground Requirement Area shall mean an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to city ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

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.

Video Service has the meaning as set forth in Section 66.002(10), Tex. Util. Code.

Video service provider has the meaning as set forth in Section 66.002(11), Tex. Util. Code for which the PUC has issued a state-issued certificate of franchise authority to provide video service.

Voice service has the meaning as set forth in Section 283.002, Tex. Local Government 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.

Sec. 75-31. - Decorative poles.

- (a) Appurtenances and attachments. No appurtenances or attachments, other than temporary holiday or special event attachments, are permitted to be placed on decorative poles.

Sec. 75-32. - Insurance and indemnity requirements.

- (a) Insurance. Any person required under this article to obtain the city's consent to make use of the public right-of-way or any person required by the code of ordinances 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.
- (b) Indemnity.
- (1) As to certificated telecommunications providers: The indemnity provisions of Section 283.057(a) and (b), Tex. Local Government Code, apply to certificated telecommunications providers. "Municipality" shall mean the "City". "Parties" shall mean the city and the certificate telecommunications provider.
- (2) As to cable service providers and video service providers: The indemnity provisions of Section 66.012(a) and (b), Tex. Util. Code, apply to cable service providers and video service providers. "Municipality" shall mean the "City". "Holder of state-issued certificate of franchise authority" shall mean a cable service provider or a video service provider. "Parties" shall mean and refer to the city and cable service provider or cable video service provider, as applicable.
- (3) As to network providers: Pursuant to Section 284.302, Tex. Local Government Code, the indemnification provisions of Section 283.057(a) and (b), Tex. Local Government Code, apply. "Municipality" shall mean the "City". "Certificated telecommunications provider" shall be revised to mean a "network provider". "Parties" shall mean the city and the network provider.
- (4) As to electric and gas franchises existing on the effective date of this ordinance: The indemnity provisions of the franchise ordinance applicable to each apply.
- (5) As to other water, wastewater, electrical, natural gas, or other services not authorized by city ordinance, the contract shall contain the following indemnify language: The user of the public right-of-way must indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens,

losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the user of the public right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the user of the public right-of-way, or its respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors, or subcontractors. If a user of the public right-of-way and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the city and user of the public right-of-way under state law. This section is solely for the benefit of the city and the user of the public right-of-way and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Sec. 75-33. - Relocation and removal of facilities.

- (a) Within 30 days following written notice from the city, any person owning facilities located in the public right-of-way, must, as directed by the city, and at the person's sole cost, 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, installation, completion, relocations, or widening of any city improvement, facilities, or equipment, in or upon the public right-of-way. Relocation of a Micro Network Node, Network Node, Node Support Pole, and related ground equipment must comply with the provisions of this article regarding spacing and other limitations.
- (b) If a person does not remove or relocate its facilities as required by (a) of this section, the city may remove the facilities at the person's sole cost and expense, without further notice to the person and within 30 days following receipt of an invoice from the city, the person shall reimburse the city for its reasonable expenses incurred in the removal or relocation of the facilities.
- (c) If the city manager or designee determines that there is imminent danger to the public health, safety and welfare, the city manager or designee may immediately disconnect, remove or relocate a person's facilities in the public right-of-way at the person's sole cost. The person shall reimburse the city for its reasonable expenses incurred in the removal or relocation of the facilities within 30 days following receipt of an invoice from the city.

- (d) If a person owning a facility in the public right-of-way removes or relocates the facility at its discretion, the person shall notify the city in writing not less than ten business days prior to the removal or relocation. A relocation must comply with the provisions of this article. The person shall obtain all permits required for the removal or relocation of the person's facilities prior to the removal or relocation.
- (e) Any person abandoning facilities located in the public right-of-way shall remove such facilities within the earlier of 90 days of the abandonment or 90 days receipt of written notice from the City.

Sec. 75-34. - Violations.

- (a) It is unlawful for any person to knowingly construct, place, maintain, or operate any line, wire, pipe, conduit, equipment, antenna, pole, structure, or facility in a public right-of-way or other public property for the purpose of providing water, wastewater, electrical, natural gas, or other unauthorized 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.
- (b) Except in cases of emergency, it is unlawful for any person to knowingly dig up, break, cut, excavate, drill or tunnel in or on any public right-of-way without first obtaining a right-of-way work permit from the city.
- (c) It is unlawful for any person to knowingly install or place any facilities in a public right-of-way or make use of the public right-of-way for any purpose not authorized by state law or the city, as applicable, in accordance with city ordinances.
- (d) It is unlawful for any person doing work under a permit to violate a provision of the permit.
- (e) 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 city manager or designee withdraws the stop work order.
- (f) Each unauthorized use of the public right-of-way or other public property is a separate offense. And each day a violation continues is a separate offense.

Sec. 75-35. - Effect on Other Utilities and Providers.

- (a) *Gas and Electric Franchises.* To the extent of a conflict between this article and a gas or electric franchise existing on the date of this ordinance, the gas or electric franchise ordinance shall control.

- (b) Other utilities and telecommunications providers. Per Section 284.252, Tex. Local Government Code, the provisions of Chapter 284 do not apply to the attachment of network nodes on poles or other structures owned by investor- owned electric utilities (§31.002, Tex. Util. Code), electric cooperatives (§11.003, Tex. Util. Code) telephone cooperatives (§162.003, Tex. Util. Code) or telecommunications providers (§51.002) and does not confer any new city authority over those utilities, cooperatives or providers.
- (c) Cable service or video service providers. Per Section 284. 253, Tex. Local Government Code, approval for the installation, placement, maintenance of operation of a network node or transport facility does not authorize:
- (1) Cable services or video service to be provided without compliance with Chapter 66, Tex. Util. Code; or
  - (2) Information service as defined by 47 U.S.C. Section 153(24) to be provided in the public right-of-way; or
  - (3) Telecommunications service as defined by 47 U.S.C. Section 153(53) to be provided in the public right-of-way.
- (d) Wireless service providers. A wireless service provider, or its affiliate, that holds a cable or video franchise under Chapter 66, Tex. Utilities Code, is not required to obtain additional authorization or to pay any fees based on the provider's provision of wireless service over its network nodes. § 284.253(b), Tex. Local Government Code.

**DIVISION 2. WIRELESS MICRO NETWORK NODES, NETWORK NODES, NODE SUPPORT POLES AND RELATED GROUND EQUIPMENT IN PUBLIC RIGHTS-OF-WAY**

**Sec. 75-37. - Right of Access.**

Subject to the provisions of Chapter 284, Tex. Local Government Code, this article, the Design Manual, and other applicable ordinances, a network provider may use the public rights-of-way to:

- (1) Construct, modify, maintain, operate, relocate and remove a network node or node support pole;
- (2) Modify or replace a utility pole or node support pole; and
- (3) Collocate on a pole, subject to an agreement with the city that does not conflict with chapter 284 of the Local Government Code.

Sec. 75-38. - Prohibited or restricted areas.

(a) *Prohibited areas.*

(1) A network provider may not install a new node support pole in a public right- of-way that is adjacent to a street or thoroughfare that is:

(A) Not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

(B) Adjacent to a single-family residential lot or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

(2) A network provider may not install a node support pole in a public right- of-way in a park.

(b) *Historic and Design districts.* A network provider must obtain advance written approval from the city manager before collocating new network nodes or installing node support poles in historic and design districts. As a condition for approval, the network providers must provide design or concealment measures for the new network node or node support pole, as provided in the design manual. The network provider should explore the feasibility of using camouflage measures to improve the aesthetics of the network node, node support pole, or related ground equipment or any portion of the network node, node support pole or ground equipment to minimize the impact to the aesthetics in the historic or design district. Nothing in this subsection limits the city's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (16. U.S.C. Section 470 et seq) and the regulations adopted to implement these laws.

(c) *Historic Landmarks.* A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site, historic structure or historic landmark recognized by the City, state or federal government (see, for example, and not limited to §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit.

(d) *Undergrounding areas.* A network provider, in relation to installation for which the city has approved a permit application, must comply with undergrounding requirements, including the city's ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions that prohibit installing above-ground structures in a public right-of-way without first obtaining zoning or land use approval. Areas of the city may be designated from time to time by the city

as underground areas in accordance with filed plats, or conversions of overhead to underground areas, as may be allowed by law. This subsection does not prohibit a network provider from replacing an existing structure.

Sec. 75-39. - Design Manual.

- (a) Adoption of Design Manual. The City Council adopts the Design Manual for Sitting and Criteria for the Installation of Wireless Micro Network Nodes, Network Nodes, Node Support Poles and Related Ground Equipment Pursuant to Chapter 284, Tex. Local Government Code dated, 2017 as Appendix A, "Design Manual". A copy of the Design Manual is available in the City Secretary's office and on-line at [www.seabrooktx.gov](http://www.seabrooktx.gov) . Revisions to the Design Manual shall be by Ordinance of City Council.
- (b) Compliance with Design Manual. A network provider must comply with any applicable provisions of the Design Manual as a condition of approval of any application, permit, or other approval required under this article or the Design Manual.

Sec. 75-40. - Transport Facilities.

- (a) A network provider that wants to connect a network node to the network using the public right-of-way may:
  - (1) Install its own transport facilities if it obtains a permit under this article and pays the public right-of-way rates in the code of ordinances Appendix B entitled "Master Fee Schedule"; or
  - (2) Obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month. § 284.055, Tex. Local Government Code.

Sec. 75-41. - Fees.

- (a) Fees. The network provider must pay the fees and rates established in the code of ordinances Appendix B, entitled "Master Fee Schedule".
- (b) Notice of annual increase in public right-of-way rate. The city will provide written notice to the network provider of a new annual public right-of-way rate, adjusted as provided in the code of ordinances, Appendix B entitled Master Fee Schedule, which shall apply to the first payment due to the city on or after 60 days following the notice.

Sec. 75-42. - Permits.

- (a) Permits required by applicable codes. In addition to the right-of-way work permit in division 3, the network provider must obtain all other permits required by

applicable codes and pay the fees established in the code of ordinances Appendix B, entitled Master Fee Schedule.

- (b) Consolidated permits. The network provider may file a consolidated application for the installation or collocation of not more than 30 network nodes and receive a single permit for a permit required by this article or an applicable code. As examples, a network provider may receive one right-of-way work permit for the installation or collocation of not more than 30 network nodes and, if an electrical permit is required, also, a network provider may receive one electrical permit for the installation or collocation of not more than 30 network nodes. §284.152, Tex. Local Government Code
- (c) Issuance of permits. The permit(s) will be issued if the application complies with the provisions of Chapter 284, Tex. Local Government Code, this article, applicable codes and the design manual.

Sec. 75-43. - Review process for applications.

- (a) The review process for a permit application for installation of transport facilities, micro network node, network node, node support pole, and related ground equipment shall conform to the following, as required by §284.154, Tex. Local Government Code:
- (1) The city will determine whether an application for a network node or node support pole is complete, specifically identify the missing information and notify the applicant of that determination within 30 days after receiving the application.
  - (2) The city will determine whether an application for a transport facility is complete within 10 days after receiving the application, specifically identify the missing information, and notify the applicant of that determination within 10 days after receiving the application.
  - (3) An application for a permit is deemed approved if the city does not approve or deny the application for:
    - (A) A node support pole within 150 days after the date the city receives a complete application.
    - (B) A network node within 60 days after the date the city receives a complete application.
    - (C) A transport facility within 21 days after the date the city receives a completed application.
  - (4) An application may not be denied unless the work to be performed under the permit does not comply with applicable codes.

- (5) If an application is denied, the city will document the basis for the denial, including the specific applicable code provision on which the denial is based. Documentation of the denial will be sent to the applicant by electronic mail on or before the date the city denies the application.
- (6) Within 30 days after the date the city 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.
- (7) The city will approve or deny a revised completed application after a denial within 90 days after the date the city receives the completed revised application. The city's review will be limited to the deficiencies cited in the denial documentation.

Sec. 75-44. - Construction requirements.

In addition to the requirements in this division 2, a network provider must comply with the provisions of division 3 of this article.

DIVISION 3. - CONSTRUCTION IN RIGHT-OF-WAY

Sec. 75-46. Right-of-way work permit required and exceptions.

- (a) Required. Except in cases of emergency, a right-of-way work permit must be obtained from the city before performing any work in the public right-of-way that requires digging up, breaking up, cutting, excavating, drilling, or tunneling in or upon any public right-of-way. If emergency work in the public 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 right-of-work permit the next business day after the emergency work.
- (b) Exceptions to permit requirement. 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. This subsection does not apply to routine maintenance of network providers;

- (2) A network provider's routine maintenance of micro network nodes, network nodes, node support poles and related ground equipment that does not require excavation or closing of sidewalk or vehicular lanes in a public right-of-way;
- (3) Replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way, but only if:
  - (A) The replacement or upgrade does not include replacement of an existing node support pole; and
  - (B) The replacement or upgrade does not defeat existing concealment elements of a node support pole.
- (4) 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 Electric Safety Code.
- (5) The repair, replacement, or maintenance of existing trees, shrubs, flowers, grass, vegetation, berms, decorative landscaping, or watering systems that are 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.
- (6) The repair, replacement, or maintenance of signs, or other ornamental features or materials denoting the entrance to a neighborhood or subdivision that are lawfully located in a 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;
- (7) Any work performed for the city under a contract with the city;
- (8) 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
- (9) 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. 75-47. - 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.
- (b) In addition to other requirements in this article, the application for transport facilities, micro network node, network node, node support pole, and related ground equipment must include:
  - (1) Construction and engineering drawings and information to confirm that the network provider will comply with the Design Manual and applicable codes;
  - (2) A certification that the proposed network node will be placed into active commercial service by or for the network provider not later than 60 days after the date the construction and final testing of the network is completed;
  - (3) A certification that the network node complies with applicable regulations of the Federal Communications Commission;
  - (4) Information related to the network providers' use of the public right-of- way to ensure compliance with Chapter 284, Tex. Local Government Code, applicable codes, this article, and the Design Manual; and
  - (5) Concealment measures for collocations of Network Nodes or installations of Node Support Poles in a historic or design district or on a decorative pole with the city manager's advance written approval for such collocation or installation.
- (c) Applications must include construction and engineering drawings and information that the city manager or designee determines is reasonably necessary to administer this article and to protect the public and public property, to the extent not inconsistent with law;
- (d) 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 city manager or designee. The permit, other than permits for network nodes, node support poles, and related equipment, may also contain special conditions the city manager or designee determines are necessary to insure compliance with this article, applicable codes, or to protect the public and public property.
- (e) 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.
- (f) A permit issued under this article is valid for the time period specified by the city manager or designee, based on the estimated time to complete the work. Upon the written request of the permit holder, the city manager or designee may grant

additional time to complete the work under the permit.

- (g) A network provider must begin the installation for which a permit is issued within nine months after the date of issuance of the permit and diligently pursue the installation to completion. The city may grant a longer time to complete the installation or grant reasonable extensions of time as requested by the network provider. §284.155, Tex. Local Government Code.

Sec. 75-48. - Stop work orders; revocation and appeals.

- (a) If a person violates a provision of this article, the city manager or designee 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.
- (b) The city manager or designee may revoke a permit for a violation of this article. To revoke a permit, the city manager or designee 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 city manager or designee 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 city manager or designee. 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. 75-49. - Requirements.

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

- (a) *Specifications.* All excavations, alterations, backfill, repairs, and other work must be made in conformance with any written specifications or requirements adopted by the city.
- (b) *Boring and encasing.* If the city manager or designee 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 city manager or

designee, the crossings must be encased in a manner approved by the city manager or designee.

- (c) Damage to city streets. Any type of ditching equipment used on city streets must be equipped with street pads. All damage done to public right-of-way and other 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 city manager or designee may make the repairs and charge the cost to the permit holder.
- (d) Correction of defects. If a permit holder fails to properly restore the surface of the public right-of-way or other public property, abandons the work, or fails to correct a hazardous condition after notice to do so, the city manager or designee 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.
- (e) Bonds. For good cause, and if necessary to protect the health, safety, and welfare of the public, the city manager or designee 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.
- (f) 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 city manager or designee.
- (g) Traffic safety. All work in a public right-of-way or adjacent to a street 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 city manager or designee believes it necessary to avoid traffic congestion or for public safety, he/she 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 city manager or designee."

## SECTION 2. INCORPORATION INTO THE CODE; PENALTY CLAUSE.

This Ordinance is hereby incorporated and made a part of the Code of the City of Seabrook. Violation of this Ordinance is subject to the penalty section of said Code and Ordinance, Section 1.15, "General Penalty, Continuing Violations" which provides that any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense. Alcohol offenses shall be as proscribed by the Texas Alcoholic Beverage Code.

**SECTION 3. REPEAL OF CONFLICTING ORDINANCES.**

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, Texas, declares that it would have passed each every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**SECTION 4. NOTICE.**

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

**PASSED, APPROVED, AND ADOPTED** on final reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 15th day of August, 2017.

**PASSED, APPROVED, AND ADOPTED** on final reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 5th day of September, 2017.

By:

Thomas G. Kolupski  
Mayor

ATTEST:

By:

Robin Hicks, TRMC  
City Secretary



APPROVED AS TO FORM:

By:

Steven L. Weathered  
City Attorney