

ORDINANCE NO. 2022-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS UPDATING THE BASTROP CODE OF ORDINANCES, ADDING CHAPTER 13, ARTICLE 13.13, ENTITLED “LICENSING AGREEMENT FOR ATTACHMENTS TO UTILITY FACILITIES”; ADDING SECTION 13.13.001, GENERAL PROVISIONS”; ADDING SECTION 13.13.002 “STANDARD LICENSING AGREEMENT FOR ATTACHMENTS TO UTILITY FACILITIES”; AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT, A REPEALER, SEVERABILITY, ENFORCEMENT, AUTHORIZATION AND; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Bastrop is a Home Rule municipality incorporated and operating under the Laws of the State of Texas; and

WHEREAS, the City Council of the City of Bastrop, Texas recognizes a need to add to its existing articles to adopt a standard licensing agreement for attachments to City Utility Facilities; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that it is necessary and fiscally prudent for the City to adopt rates for fees and charges related to attachments to City Utility Facilities; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that it is necessary to adopt an application and application process related to attachments to City Utility Facilities; and

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

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. ENACTMENT

That Article 13.13 “Licensing Agreement Attachments to Utility Facilities” of the Code of Ordinances of the City of Bastrop, Texas hereby added to read as follows:

Article 13.13 – Licensing Agreement for Attachments to Utility Facilities**Section 13.13.001 – General Provisions**

(a) The purpose of this section is to

- 1) assist in the management of the City Utility Facilities;
- 2) Govern the use and occupancy of the City Utility Facilities by telecommunication service and cable service providers;
- 3) Secure fair and reasonable compensation for the use and occupancy of the City Utility Facilities by telecommunications service and cable service providers in a nondiscriminatory and competitively neutral manner; and
- 4) Assist the City in its efforts to protect the public health, safety and welfare.

(b) No rights agreed in this article by the city shall be exclusive, and the city reserves the right to grant franchises, licenses, easements, or permissions to use the rights-of-ways and Utility Facilities within the city to any person as the city, in its sole discretion, may determine to be in the public interest.

(c) A licensee is not authorized to provide telecommunication service and or cable service as a telecommunication operator and or cable operator in the city under this article, but must first obtain a franchise from the city for that purpose, under such terms and conditions as may be required by law.

Section 13.13.002 - Standard Licensing Agreement for Attachments to Utility Facilities

(a) The city hereby adopts a Standard Licensing Agreement for Attachments to Utility Facilities, with Appendices as may be subsequently approved by the City Council, as shown in Exhibit A which is incorporated herein by reference as if set forth in full.

(b) The Licensing Agreement for Attachment to Utility Facilities must be submitted to the Planning and Development Department for review and consideration.

SECTION 3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 4. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

SECTION 5. ENFORCEMENT

The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

SECTION 6. AUTHORIZATION

The City Council authorizes the City Staff to utilize the Licensing Agreement for Attachments to Utility Facilities, which is attached and incorporated herein as Attachment A, in evaluating the potential pole attachments and contracting with the owners of the Property being conveyed to the City, including any due diligence and assessments for suitability to satisfy public purposes.

SECTION 7. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

SECTION 8. OPEN MEETINGS

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

READ & ACKNOWLEDGED on First Reading on the 13th day of December 2022.

READ & APPROVED on the Second Reading on the ____ day of January 2023.

APPROVED:

by _____
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

ATTACHMENT A

Licensing Agreement for Attachments to Utility Facilities

DRAFT