



## Item Brief

### **Meeting Date**

January 14, 2025

### **Agenda Item**

Discuss and consider action: Ordinance No. 2025-01: K. McBurnett

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING THE CITY CODE OF ORDINANCES SECTION 94-28(2)(H) ENTITLED "POLE ATTACHMENT RATE"; PROVIDING CUMULATIVE, REPEALER, AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

### **Information**

A pole attachment fee is a charge imposed by the City (as owner of utility poles) to allow a third party, such as a communications or cable company, to attach their equipment (e.g., wires, cables, antennas) to those poles. The fee is intended to compensate the City for the costs associated with maintaining, inspecting, and managing the pole infrastructure while ensuring fair access for all parties.

In 2013, the Federal Communications Commission (FCC) adopted changes to the pole rental calculation used to compute the maximum fee allowable under the law. Based on this calculation, the City Council approved adjusting the pole attachment rate from \$14.00 to \$9.73 per pole per year. However, while the rate of \$9.73 has been used since 2013, it was never officially codified in the Code of Ordinances. Ordinance No. 2025-01 revises Section 94-28(2)(h) of the Code of Ordinances to formally reflect the \$9.73 rate.

### **Fiscal Impact**

None

### **Recommendation**

Staff recommends approval of Ordinance No. 2025-01.

## ORDINANCE NO. 2025-01

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING THE CITY CODE OF ORDINANCES SECTION 94-28(2)(H) ENTITLED "POLE ATTACHMENT RATE"; PROVIDING CUMULATIVE, REPEALER, AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Burnet seeks to ensure equitable and reasonable rates for the use of City-owned utility poles by communications providers; and

**WHEREAS**, in 2013, the Federal Communications Commission adopted changes to the pole rental calculation used to compute the maximum fee allowable under the law; and

**WHEREAS**, the City Council determined in 2013 that the pole attachment rate should be adjusted from \$14.00 to \$9.73 per pole per year to reflect the new calculation based on current conditions and operational needs; and

**WHEREAS**, the City Council, finds, determines, and declares that publication of notice of this Ordinance, as required by Section 3.14 of the City Charter and the laws of the State of Texas, was made by the City Secretary within the period prescribed by Section 3.14; and

**WHEREAS**, the City Council, finds, determines, and declares that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given as required by Chapter 551 of the Texas Government Code.

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

**Section One. Code Amendment.** Chapter 94 (entitled "Streets, Sidewalks and Other Public Places") Section 94-28 (entitled "Permits and/or approvals") Subsection (2)(h) (entitled "Pole Attachment Rate") of the Code of Ordinances of the City of Burnet shall be amended and replaced in its entirety as follow:

**Sec. 94-28. Permits and/or approvals.**

- (2)h. Pole attachment rate. The pole attachment rate for each pole to be utilized for pole attachment(s) by the same communications provider is \$9.73 per year. Such fee shall be due no later than March 31 of each year, and shall be valid from April 1 of that year to March 31 of the following year, hereafter referred to as the "permitting year". The fee shall be paid for each pole used by a communications provider for pole attachments for the permitting year. Applications for new permits/attachments made during the permitting year shall include a pro-rated payment based on the number of months remaining before the end of the current permitting year.

Such fee shall be amended from time to time, based on the results of an audit of the number of poles in use by a particular permit holder to be conducted by the director or building inspector once every two years. For all nonpermitted contacts, permittee shall be billed in an amount equal to the previous two years pole attachment rates, and payment shall be collected, prior to the renewal of existing permits and/or the issuance of additional permits. The city may, at its option, require all nonpermitted contacts to be immediately removed. Failure to pay for nonpermitted contacts or permittees failure to remove nonpermitted contacts may be deemed a violation by the city council and subject to penalties as established by ordinance. The results of the audit shall be sent to the permit holder with notice of the pole rate attachment fees due. If a permit holder disputes the results of the audit, the permit holder may appeal the results of the audit to the city council by submitting a written request for an appeal within ten days of receiving notice of the results of the audit. The finding of the city council shall be final. Notwithstanding any other provision contained in this article to the contrary, communications providers shall be required to pay the pole attachment rate for each pole with attachment(s), regardless of whether such communications provider holds a franchise with the city.

**Section Two. Findings.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**Section Three. Cumulative.** This ordinance shall be cumulative of all provisions of all ordinances and codes, or parts thereof, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event Section 5, (entitled "Repealer") shall be controlling.

**Section Four. Repealer.** All ordinances and codes, or parts thereof, which 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 resolved herein.

**Section Five. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

**Section Six. Publication.** The publishers of the City Code are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

**Section Seven. Effective Date.** This Ordinance shall be effective upon the date of final adoption hereof.

**PASSED, APPROVED, AND ADOPTED** on this 14<sup>th</sup> day of January 2025.

**CITY OF BURNET, TEXAS**

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Gary Wideman, Mayor

**ATTEST:**

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Maria Gonzales, City Secretary