

**ORDINANCE NUMBER. 806-2021**

**AN ORDINANCE OF THE CITY OF HILSHIRE VILLAGE, TEXAS, AMENDING CHAPTER 4, ARTICLE 4.600, SECTION 4.605 “CONSTRUCTION REGULATIONS” OF THE CITY CODE OF ORDINANCES; PROVIDING CONSTRUCTION PERMIT FEES AND RIGHT-OF-WAY FEES; ESTABLISHING TIMING OF FEE PAYMENT; PROVIDING A SAVINGS CLAUSE; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.**

**WHEREAS**, the Texas Legislature enacted Chapter 284 of the Texas Local Government Code related to municipal regulation of wireless facilities in public rights-of-way; and

**WHEREAS**, the City has previously adopted ordinance provisions regulating the use and occupancy of public rights-of-way within the City; and

**WHEREAS**, the City Council now desires to update the City’s ordinance provisions contained in Chapter 4, Article 4.600, Section 4.605 of the City of Hilshire Village Code of Ordinances to provide for construction permit fees and right-of-way fees; and

**WHEREAS**, the City Council hereby finds and determines that the regulations and amendments set forth herein are in the best interest of the public and are adopted in furtherance of the public health, safety, morals, and general welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILSHIRE VILLAGE, TEXAS:**

Section 1. The Code of Ordinances of the City of Hilshire Village, Texas, is hereby amended by amending Chapter 4, Article 4.600, Section 4.605 to read as follows:

Sec. 4.605. - Construction Regulations.

- (a) *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal, and city regulations.

- (b) *Interference with use of property.* All construction within public rights-of-ways shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers of the city.
- (c) *Construction permits.* Unless otherwise provided by this article, no person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit. All facilities within the public right-of-way must conform to the design manual adopted by the city at the time the permit application is submitted. The permit must be completed and signed by the owner or authorized representative of the owner of the proposed facilities. Construction permits for proposed network nodes, node support poles, and transport facilities shall be processed in accordance with the timelines of section 284.154 of the Texas Local Government Code.
- (1) *Permit information required.* The person requesting a permit will provide the city administrator with documentation describing:
- i. The proposed, approximate location, route and type of all facilities to be constructed, installed, or modified and the user's plan for right-of-way construction.
  - ii. Engineering plans provided on a drawing scale not smaller than one (1) inch equals one hundred (100) feet unless otherwise approved by the city administrator.
  - iii. Description of all existing public and private utilities in close proximity to user's proposed route (within three hundred (300) feet).
  - iv. Description of plans to remove and replace pavement or drainage works in streets. Plans submitted must conform to City of Hilshire Village standard construction requirements and any other applicable law.
  - v. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth.
  - vi. Three (3) sets of engineering plans.
  - vii. The construction and installation methods to be employed for the protection of existing facilities, fixtures, and facilities within or adjacent to the right-of-way.
  - viii. The name and address of the person to whom notices are to be sent, a twenty-four-hour per day contact number for the user in case of emergency.
  - ix. Location map that includes all other facilities within five hundred (500) feet of the proposed location.
  - x. When a new pole is proposed, an industry standard pole load analysis certified by a licensed engineer.
  - xi. Soils test or geotechnical survey where required.
  - xii. A complete application and supporting documents for land use approval where required.
  - xiii. Proof of payment of the construction permit fee and prorated right-of-way fee for the remaining portion of the current calendar year.

- xiv. Complete legend of drawings submitted by user, which may be provided by reference to previously submitted documents.
- xv. The construction and installation methods to be employed for the protection of existing facilities, fixtures, and facilities within or adjacent to the right-of-way, and the estimated dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the city administrator.
- xvi. Proof of insurance.

(2) Construction permit and rights-of-way fees.

- i. Construction permit fee. Except as otherwise provided by Chapter 283 of the Texas Local Government Code, a provider shall pay to the City a construction permit fee that is calculated as of the date of application for permit by applying the appropriate permit fee to each of the facilities included in the application, in accordance with the Design Manual, not to exceed the values provided in the table below.
- ii. Rights-of-way fee. The permit holder shall pay to the City a rights-of-way fee that is calculated in accordance with Chapter 283 of the Texas Local Government Code, a written agreement with the City, or the table below, as applicable. The rights-of-way fee for access lines shall be as proscribed by the Texas Public Utilities Commission. Rights-of-way fees for all facilities other than access lines shall be prorated for the first year in which a construction permit fee is paid, and shall be paid at the time of the permit application.

| <u>Equipment Type</u>       | <u>Construction Permit Fee</u>                                 | <u>Rights-of-way Fee</u>                     |
|-----------------------------|--|--|
| <u>Transport Facilities</u> | <u>NA when application includes Network Nodes</u>              | <u>\$28 per month per node<sup>1 4</sup></u> |
| <u>Network Nodes</u>        | <u>\$500 for first 5 nodes, \$250 for each additional node</u> | <u>\$250 per year per node<sup>2 3</sup></u> |
| <u>Node Support Poles</u>   | <u>\$1000 per pole</u>   | <u>N/A</u>                                   |

<sup>1</sup> Unless equal or greater amount is paid under Chapter 283 of the Local Government Code or Chapter 66 of the Utility Code.

<sup>2</sup> As adjusted by an amount equal to one-half the annual change, if any, in the consumer price index. 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.

<sup>3</sup> Collocated network nodes on City service poles shall also pay an annual collocation fee at a rate not greater than \$20 per year per service pole.

<sup>4</sup> A network provider may not install its own transport facilities unless the provider: (i) has a permit to use the public right-of-way; and (ii) pays to the City a monthly public right-of-way rate for transport

facilities in an amount equal to \$28 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider's payment of fees to the City exceeds its monthly aggregate per-node compensation to the City. A network provider that wants to connect a network node to the network using the public right-of-way may: (i) install its own transport facilities as provided in this section; or (ii) 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. A public right-of-way rate required by this section is in addition to any other public right-of-way rate required by the City.

iii. Timing of fee payment. Permit holder shall remit the rights-of-way fees on an annual basis, unless otherwise proscribed by Chapter 283 of the Texas Local Government Code. Unless otherwise mandated by state law, the payment of rights-of-way fees shall be due on January 31<sup>st</sup> of each year following the year in which a construction permit fee and prorated rights-of-way fee was paid, and each subsequent year until (i) the facilities are removed from the right-of-way and written notice provided to the City, or (ii) the facilities are no longer owned by the permit holder and written notice of the new owner's name, address, and phone number are provided to the City.

(3) *Exception to construction permit and registration requirement.* The following activities shall not be required to obtain a permit under this article.

- i. *Emergencies.* Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the city administrator must be notified in writing within two (2) business days of any construction related to an emergency response. A reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities moved shall be provided as soon as practicable.
- ii. *Routine maintenance.* The following routine activities are not required to obtain a permit:
  - a. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
  - b. 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
  - c. 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.

At least twenty-four-hour advance written notice to the city administrator of work performed under this section is required, including proof that the user is acting with approval of a pole's owner if facilities are being collocated on an existing pole.

Work for which a permit is required may be performed at any time; provided however, any such permitted work performed within five hundred (500) feet of any residential facility may only be performed between the hours of 6:00 a.m. and 10:00 p.m. Any permitted work

performed outside of the above working hours must be approved in advance by the city engineer or his/her designee.

Provided further, all such construction and/or installation work shall be completed in the time specified in the construction permit. If the work cannot be completed within the specified time period, the user may request an extension from the city engineer, or his/her designee, which extension shall not be unreasonably withheld.

- (d) *Emergency repairs; restoration of service.* Notwithstanding the foregoing section 6.03, during an emergency where, in the good faith judgment of the user, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, such user may perform repairs to facilities within public rights-of-way, which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to, or acquisition of, a construction permit from, the city. In such cases, the user shall notify the city engineer of the city as promptly as possible after beginning the work, but in no event later than the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The user shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with then applicable city standards shall be corrected upon notice thereof from the city.
- (e) *Restoration of surface.* Users may excavate public rights-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal, or maintenance of its facilities. Upon completion of work, the user shall promptly restore the surface of the affected public right-of-way to a condition that equals or exceeds its condition prior to such construction. To such end, the restoration shall comply with the following requirements:
  - (1) Replacing all ground cover equal to or better than the type of ground cover damaged during work, either by sodding or seeding, or natural growth;
  - (2) Installation of all manholes and handholes as required;
  - (3) All bore pits, potholes, trenches or any other holes shall be filled in or covered daily, unless other safety requirements are approved by the director of public works;
  - (4) Leveling of all trenches and backhoe lines;
  - (5) Restoration of excavation site to city specifications; and
  - (6) Restoration of all landscaping and other affected facilities such as sprinkler systems and mailboxes.
- (f) *Maintenance period; delay in construction.* All restoration work shall be maintained by the user to the satisfaction of city for a period of one (1) year from the date of completion of such restoration work. No public right-of-way shall be encumbered by construction, maintenance, removal, restoration, or repair work for a longer period than shall be reasonably necessary to execute such work. If there is an unreasonable delay by the user in restoring and maintaining the public right-of-way or restoring such public right-of-way after such excavations, construction, installation or repairs have been made, the city shall notify the user in writing that if such restoration or maintenance is not performed within five (5) days of receipt of such notice, the city shall have the right to restore or repair the same and

to require the user to pay the reasonable cost of such restoration or repair. Furthermore, if restoration is not satisfactory and performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any permits not approved until all restoration is complete.

- (g) *Routine maintenance.* Routine maintenance on facilities located within public. Rights-of-way shall be conducted in a manner that is consistent with applicable city regulations governing such work, if any.
- (h) *Obstructions to traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities to facilities, other than for emergency repairs, shall require prior notification to the city engineer of the city. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a user performs or causes to be performed any work over or across a public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the user shall provide construction and maintenance signs and sufficient barricades and flagmen at such sites as are reasonably necessary to protect the public and the user's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest edition of the Texas Manual on Uniform Traffic Control Devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.
- (i) *Closing of streets.* If a user's work requires the obstruction of any street for a period longer than thirty (30) minutes, such obstruction shall be approved by the city engineer. The user shall not close any public street, but shall at all times maintain a route of travel along and within any roadway that is within a public right-of-way; provided however, in cases of an emergency, the city engineer may authorize the temporary closing of a public street or sidewalk to allow the user to complete such emergency repairs if, in the opinion of the city engineer, such closing is necessary to protect the safety of the general public.
- (j) *Construction drawings.* Within one hundred twenty (120) days following completion of construction, or within one hundred twenty (120) days following any material alteration or modification thereto, the user shall supply the city with a complete set of construction drawings for the work, or for the material alteration or modification thereof, unless the user certifies to the city, in writing, that such construction was completed in accordance with the construction plans filed pursuant to section 4.605(c) above, in which case, such construction plans shall be marked accordingly by the city and filed as the "permanent construction drawings." For the purposes hereof, a material alteration or modification of a facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the facilities with reasonable accuracy. In lieu of print documents, a user may, upon advance reasonable request, provide such drawings and maps by other mediums, including electronic mediums, provided the city has the capability to access such information.

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. 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 or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Hilshire Village, Texas, declares that it would have passed each and 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.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Russell Herron, Mayor

ATTEST:

\_\_\_\_\_  
Susan Blevins, City Secretary