



STAFF REPORT

DATE: August 15, 2017

TO: Ronald L. Olson, City Manager

FROM: Kathryn H. Davis, City Attorney

SUBJECT: Chapter 25 Revisions: Right-of-Way Management

BACKGROUND AND FINDINGS:

Senate Bill 1004 relating to the deployment of network nodes in public right-of-way was passed by the Texas Legislature and will be effective September 1, 2017. The bill provides access to the city's right-of-way for network providers to install network nodes and poles without a franchise agreement but subject to a right-of-way management ordinance, regulates how cities regulate applications and permits, and limits what cities can charge for permit fees, annual access rates, and fees for collocating on city-owned poles.

The City's Charter requires a franchise agreement to use the City's right-of-way for the purpose of furnishing the public any general public service, but telecommunications and network providers will not be subject to this requirement per state law. Chapter 25 of the Code of Ordinances currently includes limited regulation of excavation within the right-of-way, but has not been updated since 1981 and contains outdated references and procedures. To effectively provide for safety within the right-of-way, staff recommends updating this chapter to require compliance with the City's adopted Infrastructure Design and Development Standards Manual, prohibit interference with the right-of-way, provide for removal or relocation of facilities within the right-of-way as necessary for the construction of city improvements, require additional documentation in the permit application including proof of insurance and engineering drawings necessary to confirm compliance with design requirements, add permit fees for network nodes and excavation, add right-of-way rates for network nodes and transport facilities, require execution of a standard Service Pole Attachment Agreement prior to collocation of network nodes on city poles, and provide design requirements for network nodes and support poles.

THE ALTERNATIVES CONSIDERED:

- 1) The City could do nothing and allow network providers to access the right-of-way pursuant to the state regulations.
- 2) The City could adopt the proposed right-of-way management ordinance.

Which alternative is recommended? Why?

Staff recommends the second option. If the City did not adopt the ordinance, network providers would be allowed by statute to occupy the right-of-way without complying with additional right-of-way management regulations and without paying the City any fees for using the right-of-way. Additionally, the current ordinance needs to be updated regardless of SB 1004 to conform to adopted design standards and to more effectively control construction activities within city right-of-way.

CONFORMITY TO CITY POLICY:

This state law will trump the City's charter provision that requires a franchise agreement for the use of city right-of-way with regard to telecommunications and network providers; otherwise, adoption of the ordinance by City Council would comply with city policy and state law.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

None.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

Staff recommends adoption of the proposed right-of-way management ordinance which better provides for the safety of the public within the right-of-way and for compensation authorized by state law for the use of the right-of-way.

DEPARTMENTAL CLEARANCES:

Legal
Public Works
Planning and Development

ATTACHED SUPPORTING DOCUMENTS:

Ordinance