

ORDINANCE NO. 2018-004

AN ORDINANCE ESTABLISHING TERMS AND CONDITIONS UNDER WHICH UTILITIES AND LIKE SERVICE PROVIDERS MAY USE PUBLIC-RIGHT-OF-WAY AND OTHER PUBLIC PROPERTY WITHIN THE CITY OF SANTA CLARA TO PROVIDE OR TRANSMIT THEIR RESPECTIVE SERVICES, ADOPTING A FEE FOR EACH SUCH USE AND CONTAINING GENERAL TERMS AND CONDITIONS.

WHEREAS, Article III, section 52 of the Texas Constitution provides public rights-of-way and other like land interests cannot be given away free of charge; and

WHEREAS, Chapter 182 of the Texas Tax Code provides that an incorporated City or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business; and

WHEREAS, Chapter 33 of the Texas Utilities Code provides that a municipality may impose on an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative, as appropriate, that provides distribution service within the municipality a reasonable charge for the use of a municipal street, alley, or public way to deliver electricity to a retail customer; and

WHEREAS, Chapter 66 of the Texas Utilities Code provides for a State-issued cable and video certificate of franchise authority to be administered by the Public Utilities Commission for the benefit of Texas municipalities; and

WHEREAS, Chapter 283 of the Texas Local Government Code provides for management of public right-of-way used by telecommunications provider in a municipality, to include right-of-way fees as determined by the Public Utilities Commission; and

WHEREAS, Chapter 284 of the Texas Local Government Code provides for the use of public rights-of-way by network nodes and establishes a public-right-of-way rate to be charged by municipalities for such use, as well as a rate adjustment; and

WHEREAS, Chapters 363 and 364 of the Texas Health and Safety Code provide for the regulation of solid waste collection in requiring cities to ensure that solid waste management services are provided to all persons in its jurisdiction; and

WHEREAS, the City of Santa Clara, Texas desires to enact an ordinance to manage to the fullest extent permitted by law access to its public rights-of-way for the health, safety and welfare of the public; and

WHEREAS, the City of Santa Clara, Texas desires to receive fair and reasonable compensation from service providers for use of the public right-of-way within the City of Santa Clara; and

WHEREAS, the City of Santa Clara, Texas desires to adopt existing methods as provided by State law to determine compensation to be paid for use of the public right-of-way in the City of Santa Clara; and

WHEREAS, the City of Santa Clara, Texas desires to establish a uniform method to determine compensation to be paid for use of the public right-of-way in the City of Santa Clara for each type of utility or service provider for which State law has not provided such a method.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF

THE CITY OF SANTA CLARA, TEXAS:

As per the various State of Texas statutes authorizing a City to collect franchise fees, the City of Santa Clara Texas hereby gives notice to the various utilities and service providers, which use the City right-of-way and other public property located within the City to provide or transmit services, that franchise fees, as detailed and in accordance with the following, will be due and payable to the City upon the passage and signing of this Ordinance.

SECTION 1. DEFINITIONS

Access Line – as defined by Chapter 283 of the Texas Local Government Code and further described by the Public Utility Commission of the State of Texas.

City – The City of Santa Clara, Texas.

County – The County of Guadalupe, Texas.

Facilities – the plant(s), equipment and property, including, but not limited to, duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures and appurtenances and all associated transmission media which are owned by a utility or service provider and located in the public rights-of-way of the City.

Franchise Fee – this includes ‘rental fee’ and ‘use fee’ paid by utilities and providers for the use of the city’s public right-of-way or other city property to provide or transmit their services.

Gross Receipts / Revenue – includes by way of illustration and not limitation, all fees charged customers for any and all services provided by the Service Provider related to its services. Revenue of an affiliate derived from any and all services provided by the Service Provider shall be Gross Revenue to the extent the treatment of such revenue as revenue of affiliate and not the Service Provider has the effect of avoiding the payment of Franchise Fees which would otherwise be paid to the City. In no event shall revenue of an affiliate be Gross Revenue to the Service Provider if such revenue is otherwise subject to Franchise Fees to be paid to the City.

Municipality – The City.

Person – a natural person, corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

Public Right-of-Way – All present and future streets, avenues, highways, alleys, bridges, viaducts, public thoroughfares, public utility easements, public ways, public grounds, and without limitation by the foregoing enumeration, other public property within the corporate limits of the City.

Service Provider – shall mean any person, corporation, association, partnership, and other such entity using a public right-of-way or other City property within the City to provide or transmit a service within the corporate limits of the City.

State – State of Texas.

Utility – same as service provider.

SECTION 2. FEES FOR USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY

A. Water and Wastewater

Unless otherwise contracted with the City, utilities and other service providers of Water and Wastewater services that use the City's public right-of-way or other public property located within the City to provide or transmit services shall pay a Franchise Fee to the City for such use in an amount equal to not less than two percent (2%) of such service provider's gross receipts for services provided within the City.

Chapter 182 of the Texas Tax Code.

B. Natural Gas

Unless otherwise contracted with the City, utilities and other service providers of Natural Gas services that use the City's public right-of-way or other public property located within the City to provide or transmit services shall pay a Franchise Fee to the City for such use in an amount equal to not less than two percent (2%) of such service provider's gross receipts for services provided within the City.

Chapter 182 of the Texas Tax Code

C. Electric

Unless otherwise contracted, utilities and other service providers of Electric services that use the City's public right-of-way or other public property located within the City to provide or transmit services shall pay a Franchise Fee to the City that is equal to the highest kilowatt hour rate paid by such service provider to any other City located in Guadalupe County based upon the kilowatt hours sold within the City. If there exists no other City located in Guadalupe County receiving franchise fee payments from the service provider the City and the service provider shall negotiate and enter into a franchise fee agreement.

Chapter 33 of the Texas Utilities Code

D. Cable Television and Other Video Services

Utilities or other service providers of Cable Television and other video services that use the City's public right-of-way or other public property located within the City to provide or transmit services shall make quarterly franchise fee payments to the City as established by the legislature of the State of Texas. The franchise fees to be paid by the service provider to the City shall be equal five percent (5%) of the gross revenues earned by the service provider in the City, or any other amount as amended by the legislature of the State of Texas. In addition the service provider shall pay the City a public, educational, and government (PEG) channel support fee in an amount equal to one percent (1%) of the gross revenues earned by the service provider in the City, or any other amount as amended by the legislature of the State of Texas.

As the Cable Television and other video services franchise fees are established by the legislature of the State of Texas these fees are subject to change and as such the City hereby adopts any futures changes and incorporates them herein for all purposes. Thus, it is the responsibility of the service provider to stay informed of such changes in amount and frequency of franchise fees owed to the City.

Chapter 66 of the Texas Utilities Code

E. Telecommunications

Unless otherwise contracted, utilities and other service providers of Telecommunications services that use the City's public right-of-way or other public property located within the City to provide or transmit services shall pay a Franchise Fee quarterly to the City. The franchise fees to be paid the by each service provider to the City are calculated monthly based on the number of access lines, by category, that the service provider has within the City and the access line rates by category as established and adjusted by the Public Utility Commission (PUC).

As the Telecommunications services franchise fees are established by the PUC it is the responsibility of the service provider to stay informed of such changes in amount and frequency of franchise fees owed to the City.

Chapter 283 of the Texas Local Government Code

F. Network Nodes

Unless otherwise contracted, utilities and other service providers that use the City's public right-of-way or other public property located within the City to provide or transmit services by way of Network Nodes shall pay a Franchise Fee to the City that is equal to two-hundred-fifty dollars (\$250.00) in 2018 for each node installed by the service provider within the City's public right-of-way or on other public property within the City. Each subsequent year after 2018, the franchise fee owed to the City from each service provider for each installed node shall increase by an amount equal to not less than one-half the annual increase, if any, in the consumer price index.

Chapter 284 of the Texas Local Government Code

G. Solid Waste

Unless otherwise contracted, utilities and other service providers of Solid Waste services that use the City's public right-of-way or other public property located within the City to provide or transmit services shall pay a Franchise Fee to the City that is equal to not less than eight percent (8%) of such service provider's gross receipts for services provided within the City.

Chapters 363 and 364 of the Texas Health and Safety Code

SECTION 3. GENERAL TERMS OF THE ORDINANCE

A. Calculation of Fees

Unless, specifically restricted by State or Federal Law, nothing herein prevents the City from negotiating and entering into a franchise fee agreement with any service provider for the use of the City's public right-of-way or other public property located within the City.

Those franchise fees that are now established by the legislature of the State of Texas or another State entity authorized by the State legislature or that may be established or amended in the future by such are hereby adopted for all purposes.

B. Franchise Responsibility

- 1) Each Utility and Service provider, unless otherwise exempt by State or Federal Law, is required to comply with all applicable Ordinances of the City of Santa Clara, Texas, the laws of the State of Texas and any applicable Federal law.
- 2) Any construction, maintenance or relocation of facilities by any Utility or Service Provider within the City's right-of-way or any other publically owned land within the City, unless expressly exempt by State or Federal Law, shall specifically abide by the Master Roads Program.
- 3) All new facilities plans, unless specifically expected by State or Federal Law, shall be presented to the City for recommendations at least six months prior to construction and for approval no less than two months prior to construction.
- 4) The City reserves the right to require relocation of facilities upon forty-five (45) days notice for the widening of public right-of-ways, and to cure or otherwise address a public health or safety concern.

C. Insurance and Bonds

Each Utility and Service Provider who use the City's public right-of-way or other public property within the City shall provide and furnish insurance coverage to protect the utility/service provider, its employees, and the City from claims for bodily injuries, death or property damage which may arise out of the utility's or service provider's actions. The types of coverage and the minimum levels of such coverage can be found in the Master Roads Program. The coverage shall include, but is not limited to, workmen's compensation, general liability and automobile insurance.

A bond is required by the City from the Utility or Service Provider for the benefit of the City in accordance with the Mast Roads Program when construction is to occur within, on or under the public right-of-way or on other publicly owned property within the City.

D. Indemnity

Each Utility and Service Provider who use the City's public right-of-way or other public property within the City shall indemnify, hold harmless and defend the City of Santa Clara, Texas, from and against any and all costs, expenses (including reasonable counsel fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind and asserted by or on behalf of any person or other governmental authority, arising out of or in any way connected with work performed by a contractor or supplier on behalf of or for the Utility or Service Provider.

E. Conflict

All Ordinances or Resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed.

If any provision of this Ordinance is in conflict with any applicable amendment to State Law, Federal Law or authorized agency rule the amended Law or rule then adopted shall prevail and be incorporated herein for all purposes not affecting the remainder of the Ordinance.

F. Severability

If any provision, section, paragraph, sub-paragraph, clause or phrase of this Ordinance or the application of such to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

G. Savings Clause

This Ordinance shall remain in full force and effect, save and except as amended or repealed.

H. Meeting Open To Public

It is hereby found and determined that the meeting at which this Resolution was introduced, read and approved was open to the public as required by law and that the public notice of the time, place and purpose of said meeting was given as required.

I. Effective Date

This Resolution shall be effective upon passage.

PASSED AND APPROVED this 28th day of May, 2018.

CITY OF SANTA CLARA, TEXAS

By: _____

Jeff Hunt, Mayor

ATTEST:

Donna White, City Secretary