

ORDINANCE NO. XXX-XXX

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ADDISON, TEXAS, AMENDING SECTION 70-36 (DEFINITIONS) OF DIVISION 1 (GENERALLY), SECTION 70-65 (UNDERGROUNDING; UNDERGROUNDING REQUIREMENTS) OF DIVISION 2 (TECHNICAL SPECIFICATIONS), SECTION 70-91 (GENERAL CONSTRUCTION AND MAINTENANCE STANDARDS, SIZE OF NETWORK NODES AND EQUIPMENT CABINETS; UNDERGROUND CONSTRUCTION) AND SECTION 70-93 (INSTALLATION IN UNDERGROUND DISTRICTS; INSTALLATION IN DESIGN DISTRICTS) OF DIVISION 6 (NETWORK PROVIDERS), ALL OF ARTICLE III (RIGHT-OF-WAY MANAGEMENT) OF CHAPTER 70 (STREETS, SIDEWALKS AND OTHER PUBLIC PLACES) OF THE CODE OF ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison is a Home-Rule Municipality located in Dallas County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas (“Town”); and

WHEREAS, the Town is charged with maintaining control of and access to the right-of-way in order to protect the public health, safety, and welfare; and

WHEREAS, the Town is also charged with the provision of public health, safety and welfare; and

WHEREAS, the City Council of the Town (the “City Council”) has investigated and determined that the provision of public safety facilities is an essential function of the Town; and

WHEREAS, public safety facilities, generally, must be installed aboveground and in accordance with recommended installation design to best perform their function and provide for the public’s safety (i.e. traffic lights, stop signs, red light cameras); and

WHEREAS, the City Council has investigated and determined that it is in the best interest of the Town to amend Section 70-36 (Definitions) of Division 1 (Generally), Section 70-65 (Undergrounding; undergrounding requirements) of Division 2 (Technical Specifications), Section 70-91 (General construction and maintenance standards; size of network nodes and equipment cabinets; underground construction) and Section 70-93 (Installation in Underground Districts; Installation in Design Districts) of Division 6 (Network Providers), all of Article III (Right-of-Way Management) of Chapter 70 (Streets, Sidewalks and other Public Places) to stipulate that public safety facilities shall be installed above ground and according to recommended installation design in order to perform their function so as to keep the public safe.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated as if fully set forth herein.

SECTION 2: Amending Sec. 70-36 (Definitions) of Division 1 (Generally) of Article III (Right of Way Management) of Chapter 70 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the Town of Addison. Sec. 70-36 (Definitions) of Division 1 (Generally) of Article III (Right-of-Way Management) of Chapter 70 (Streets, Sidewalks and other Public Places) of the Code of Ordinances of the Town of Addison is hereby amended as follows:

“Sec. 70-36 Definitions

The following definitions apply in this article, except as otherwise specifically noted otherwise. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word “shall” is mandatory and not merely permissive.

...

Public safety facilities means any facilities installed in the right-of-way, regardless of the technology employed, by or on behalf of a governmental entity, necessary to promote the public safety, including but not limited to traffic control signs and signals, traffic signal preemption systems, traffic management systems, license plate readers, and closed-circuit cameras.

...”

SECTION 3: Amending Sec. 70-65 (Undergrounding; Underground service requirements) of Division 2 (Technical Specifications) of Article III (Right of Way Management) of Chapter 70 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the Town of Addison. Sec. 70-65 (Undergrounding; Underground service requirements) of Division 2 (Technical Specifications) of Article III (Right-of-Way Management) of Chapter 70 (Streets, Sidewalks and other Public Places) of the Code of Ordinances of the Town of Addison is hereby amended as follows:

“Sec. 70-65 Undergrounding; Underground service requirements; Public safety facilities

...

- (c) *Public safety facilities*. Notwithstanding the provisions of Sec. 70-91 or any other City ordinance requiring the underground installation of facilities in the right of

way, public safety facilities shall be installed as specified by the governmental entity completing the installation and as approved by the Town and are, therefore, not required to be installed underground.

...”

SECTION 4: Amending Sec. 70-91 (General construction and maintenance standards; Size of network nodes and equipment cabinets; Underground construction) of Division 6 (Network Providers) of Article III (Right of Way Management) of Chapter 70 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the Town of Addison. Sec. 70-91 (General construction and maintenance standards; Size of network nodes and equipment cabinets; Underground construction) of Division 6 (Network Providers) of Article III (Right-of-Way Management) of Chapter 70 (Streets, Sidewalks and other Public Places) of the Code of Ordinances of the Town of Addison is hereby amended as follows:

“Sec. 70-91. General construction and maintenance Standards; Size of network nodes and equipment cabinets; Underground construction

...

(c) Underground Construction. As required by this Ordinance, and when required by Applicable Codes, general ordinances, deed restrictions, regulations or rules of the Town or applicable state or federal law, right-of-way users, network provider’s, or public infrastructure contractor’s new facilities shall be placed underground at right-of-way user’s, network provider’s, or public infrastructure contractor’s expense. Underground facilities are required for network provider’s in Underground Districts as provided in this Ordinance. Related equipment, such as pedestals, must be placed in accordance with the Town’s applicable code requirements and rules, including all visibility triangle requirements. In areas not designated as an Underground District, where existing facilities are aerial, network provider or public infrastructure contractor may install aerial facilities. Following the original adoption of this Ordinance, if a location is subsequently designated by the Town to be an underground requirement area, then a right-of-way user’s or network provider’s permit for the location of the facilities, at such location will be revoked 90 days after the designation, with removal of said facilities at such location within 90 days of such designation, or as otherwise reasonably allowed by the Town for the transition of other overhead facilities. Placement of street-related poles and facilities above ground in the right-of-way, including but not limited to stop signs, street lights and public safety facilities, does not preclude an area from designation as an area requiring undergrounding and placement of facilities on street-related poles in an area requiring undergrounding is prohibited. Notwithstanding the placement of street-related poles and facilities, including but not limited to stop signs, street lights and public safety facilities above ground in the right-of-way in an Underground District, right-of-way users, network provider’s and public infrastructure contractor’s new facilities shall be placed underground.

...

SECTION 5: Amending Sec. 70-93 (Installation in Underground Districts; Installation in Design Districts) of Division 6 (Network Providers) of Article III (Right of Way Management) of Chapter 70 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the Town of Addison. Sec. 70-93 (Installation in Underground Districts; Installation in Design Districts) of Division 6 (Network Providers) of Article III (Right-of-Way Management) of Chapter 70 (Streets, Sidewalks and other Public Places) of the Code of Ordinances of the Town of Addison is hereby amended as follows:

“Sec. 70-93 Installation in Underground Districts; Installation in Design Districts

...

(b) Installation in Design Districts

1. Installation. A network provider shall obtain advance written consent from the Director before collocating new network nodes or installing new node support poles in an area of the Town that has been zoned or otherwise designated as a design district. The network provider shall be required to comply with the requirements described in the Design Manual and as set forth in this Section. The Town has the authority and discretion to designate new historic and design districts any time, including subsequent to the adoption of this Division. Notwithstanding the provisions of this ordinance or any other City ordinance requiring the compliance with design standards, including the Design Manual, for installation of facilities in the right of way, public safety facilities shall be installed as specified by the governmental entity completing the installation and as approved by the Town and are, therefore, not required to comply with this Section, the Design Manual or other City ordinance.

...”

SECTION 6: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Addison hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: SAVINGS/REPEALINGS. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8: PENALTY. It is the intent of the City Council of the Town of Addison in adopting this Ordinance that an offense under this Ordinance be a strict liability offense; in the prosecution

of an offense under this Ordinance, no pleading or proof of intent shall be required to establish the guilt of an accused. Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the Town from filing suit to enjoin the violation.

SECTION 9: EFFECTIVE DATE. This Ordinance shall take effect immediately upon and after its passage and publication as provided by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS this 28th day of August, 2018.

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

APPROVED AS TO FORM

Brenda N. McDonald, City Attorney