

ORDINANCE NO. 1145

AN ORDINANCE OF THE CITY OF STAFFORD, TEXAS, AMENDING CHAPTER 78 - STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES, OF THE CITY CODE OF ORDINANCES; REPEALING ARTICLE V - RIGHT-OF-WAY MANAGEMENT OF CHAPTER 78; AMENDING ARTICLE VIII - USE AND OCCUPANCY OF RIGHTS-OF-WAY, OF CHAPTER 78; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STAFFORD, TEXAS:

Section 1. Section 78-4. - Utility franchise required, of Article I. - In general, of Chapter 78 - Streets, Sidewalks and Certain Other Public Places, of the City of Stafford Code of Ordinances ("City Code") is deleted in its entirety.

Section 2. Article V. - Right-of-Way Management, of Chapter 78 - Streets, Sidewalks and Certain Other Public Places, including all subsections, of the City Code is deleted in its entirety.

Section 3. Article VIII. - Use and Occupancy of Rights-of-Way, of Chapter 78 - Streets, Sidewalks and Certain Other Public Places, of the City Code is amended to read as follows.

"ARTICLE VIII. - USE AND OCCUPANCY OF RIGHTS-OF-WAY

Sec. 78-181. - Findings.

The facts and matters set forth in the preamble of this article are hereby found to be true and correct.

Sec. 78-182. - Definitions.

For the purposes of this article the following words, terms, and phrases shall have the meanings ascribed thereto, unless the context of their usage clearly indicates otherwise:

- (a) *City* shall mean the City of Stafford, Texas, a home rule municipal corporation of the State of Texas.
- (b) *Concealment* shall mean any wireless facility that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that the wireless facility blends into the surrounding environment and is visually unobtrusive. Concealment includes but is not limited to covering with a façade, designs that blend with the surrounding character of an area, paint that matches surrounding poles, disguising with landscaping, or locating underground. The specific method of concealment that is technically feasible for a specific

location is at the discretion of the user. However, certain kinds of industry-standard concealment measures that may be administratively approved in those locations where concealment is required are provided in Section

- (c) *Decorative pole* shall mean a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments have been placed or are permitted to be placed according to City Code.
- (d) *Director of Public Works* shall mean the Director of Public Works or their designee.
- (e) *Emergency* shall mean a situation which, unless immediate remedial action is taken, will likely result in harm to public health, safety, and/or welfare.
- (f) *Facilities* or *facility* shall mean and include, but shall not be limited to, pipes, conduits, wires, cables, towers, switches, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, fixtures, appurtenances, and such other objects, devices, or other items of tangible personal property, which are designed, constructed, installed, placed, used or operated in, upon, over, across, above, or below public rights-of-way. Notwithstanding the foregoing, structures designed and constructed for the support and passage of vehicular and pedestrian traffic, such as streets, alleys, highways, driveways, and sidewalks, whether at, below, or above grade, shall not be deemed to be facilities, nor shall standard sized private or public mailboxes be deemed to be facilities. Provided further, a private, individually owned, connection and/or attendant downstream service line or device, through which a utility service is received by the end user owning same, for which required permits have been issued under applicable building, plumbing, electrical, or other codes of the city, shall not be deemed as facilities hereunder.
- (g) *Micro network node* shall mean network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.
- (h) *Municipally owned utility pole* shall mean a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.
- (i) *Network node* or *node* shall mean equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes: (i) equipment associated with wireless communications; (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and does not include: (i) an electric generator; (ii) a pole; or (iii) a macro tower, as that term is defined by Chapter 284 of the Texas Local Government Code.
- (j) *New node support pole* or *new pole* shall mean a new installation, including any extension or replacement of an existing pole where the replacement is not excepted from permit requirements under section 78-185 of this Article.
- (k) *Node support pole* shall mean a pole installed by a network provider for the primary purpose of supporting a network node.
- (l) *Park* shall mean any property dedicated or used as a park or for public park purposes or that may be dedicated or used as a park or for public park purposes within the City.

- (m) *Person* shall mean an individual, corporation, association, partnership, joint venture, firm, limited liability partnership, joint stock company, association, governmental entity other than city, or any other public or private entity.
- (n) *Pole* shall mean a service pole, municipally owned utility pole, node support pole, or utility pole.
- (o) *Provider* shall mean a wireless network provider or telecommunication service provider.
- (p) *Private easement* shall mean an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.
- (q) *Public rights-of-way* or *right-of-way* shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property within the corporate limits of the city, and in which the city holds a property interest (fee title, easement or otherwise), or over which the city holds and exercises a right of management or control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of facilities. With regard to wireless facilities, this term does not include: (i) a private easement; or (ii) a public easement that is limited in scope, e.g. drainage only easements.
- (r) *Registration fee* shall mean the total amount paid to the City on an annual basis for other facilities for the use and occupancy of the rights-of-way. For wireless network providers, this is the rental charge paid in accordance with Chapter 284 of the Texas Local Government Code.
- (s) *Service pole* shall mean a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including: a pole that supports traffic control functions; a structure for signage; a pole that supports lighting, other than a decorative pole; and a pole or similar structure owned or operated by a municipality and supporting only network nodes.
- (t) *Street* shall mean the portion of the public right-of-way, including a highway, designed or used for vehicular traffic, including that part of the street marked or platted as a bicycle or public transit lane. Street width shall be the widest of the following measurements: (i) edge of pavement to edge of pavement, or (ii) curb to curb.
- (u) *Transport facility* shall mean each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.
- (v) *User* shall mean any person that owns, controls, constructs, installs, repairs, maintains, upgrades or removes facilities in the right-of-way, including any contractor or subcontractor of a person who owns or controls a structure in the right-of-way, and any contractor or subcontractor acting on behalf of a provider.
- (w) *Utility pole* shall mean a pole that provides: electric distribution with a voltage rating of not more than 34.5 kilovolts; or services of a wireless provider, as defined by Section 51.002, Utilities Code.
- (x) *Wireless service* shall mean any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.
- (y) *Wireless network provider* shall mean a person that provides wireless service to the public; or a person that does not provide wireless services and that is not an electric utility but

builds or installs on behalf of a person that provides wireless service to the public: network nodes, node support poles, or any other structure that supports or is capable of supporting a network node.

Sec. 78-183. - Unauthorized use of public rights-of-way prohibited.

Except as otherwise specifically provided by law, this article, or any other ordinance of the city applicable thereto, it shall be unlawful for any person to cause or permit the placement, construction, operation or maintenance of any facility within public rights-of-way, unless authorization has been granted by the city in accordance herewith or in accordance with such other ordinance of the city applicable thereto. Provided further, nothing herein shall be construed as superseding or preempting any provision of the city's zoning regulations applicable to wireless telecommunications facilities.

Sec. 78-184. - Registration required.

(a) *Registration Required.* No person shall commence or continue with the placement, construction, operation, maintenance or installation of any facilities within the rights-of-way of the City except as provided by this Article, or as provided by other City permits or written agreements with the City. Registration and permits will be issued in the name of the person who will own the facilities. All users of the right-of-way must register annually with the City. Registration shall include:

- (1) The name, address, and telephone number of the user;
- (2) The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
- (3) The location, including exact coordinates, of all facilities located in the rights-of-way;
- (4) A description of each facility located in the rights-of-way;
- (5) Proof of payment of the annual registration fee, or pro-rated annual registration fee where applicable; and
- (6) Proof of liability insurance in the amount of five hundred thousand dollars (\$500,000.00) and maintenance bond if required.

(b) *Registration Fees.* Unless an equal or greater amount is paid for specific facilities located in the right-of-way under Chapter 283 of the Local Government Code or Chapter 66 of the Utility Code, annual registration fees shall be as follows:

- i. \$250 per network node per year;
- ii. An additional \$20 per node per year for nodes attached to a City service pole; and
- iii. For transport facilities, \$28 per network node per month for which the facilities provide backhaul.

Registration fees required by this Section shall be due and payable annually on July 31st of each 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 user named on the most recent registration and written notice of the new user's name, address, and phone number are provided to the City. Facilities located in the City's right-of-way at the time this Ordinance is adopted shall be required to register and pay the annual registration fee beginning on July 31, 2019.

Sec. 78-185. - Construction within public rights-of-way; Permit required.

(a) *Permit Required.* Unless otherwise provided by this section, no person shall perform any construction, repair, replacement, maintenance or installation of facilities in the right-of-way without first obtaining a construction permit. A complete application for a construction permit shall include:

- (1) A permit application on the form proscribed by the director of public works.
- (2) A signature on the application by the owner or authorized representative of the owner of the proposed facilities; Permit applications that include facilities designed or used to provide wireless service shall be signed by an authorized employee or officer of the wireless service provider or include a letter from the wireless service provider granting the applicant authority to perform work in the right-of-way on behalf of the provider and sign the application as an authorized agent of the wireless service provider.
- (3) 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.
- (4) Plans showing all proposed facilities, including power lines and proposed power source or connection to electric utilities, provided on a drawing scale not smaller than one (1) inch equals fifty (50) feet unless otherwise approved by the Director of public works. Plans for installation of new poles or underground lines must be signed and certified by a licensed engineer.
- (5) For new poles or underground lines, a traffic control plan specific to the proposed location signed and certified by a licensed engineer.
- (6) Description of any known public and private utilities in close proximity to user's proposed route (within 300 feet).
- (7) Description of plans to remove and replace pavement or drainage works in streets. Plans submitted must conform to City of Stafford standard construction requirements and any other applicable law.
- (8) Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth (must be shown in plan and profile).
- (9) The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way.
- (10) Proof of insurance and bonds.
- (11) The name and address of the person to whom notices are to be sent.
- (12) The name and contact number for a 24-hour per day contact person in case of emergency.
- (13) Location map that includes all other above-ground structures within 500 feet of the proposed location.
- (14) An industry standard pole load analysis certified by a licensed engineer when a new pole is proposed.
- (15) Proof of payment of the construction permit fee and prorated registration fee.

(b) *Exception to construction permit requirement.* The following activities shall not be required to obtain a permit under this Article.

- (1) *Emergencies.* Emergency responses related to existing structures may be undertaken without first obtaining a permit; however, the Director of public works 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 structures moved shall be provided as soon as practicable.

- (2) *Routine maintenance.* The following routine activities are not required to obtain a permit under this section: routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; 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 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 Code currently adopted by the City. For purposes of this section, “substantially similar” Includes the following: (i) A replacement or upgrade that does not include replacement of an existing node support pole nor defeat existing concealment elements of a node support pole; and (ii) a new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by the City’s Design Regulations; and the new or upgraded pole will not be more than 10 percent higher or than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by the City’s Design Regulations.
- (3) *Right-of-way rental agreements.* The City Council may, from time to time, adopt one or more acceptable forms for right-of-way rental agreements that shall be available to all providers under the same terms and conditions. Construction permits, including land use approvals where applicable, shall not be required for facilities installed pursuant to a pre-approved right-of-way rental agreement form executed by the Mayor and the provider.
- (c) *Permit Fees.* Unless fees for the specific facilities for which a permit is requested have been paid to the city in accordance with chapter 66 of the Texas Utilities Code or Chapter 283 of the Texas Local Government Code, the fee for a construction permit shall be 1.5% of the estimated value of the work; provided, however, the construction permit fee for network nodes and node support poles shall not exceed the following:
 - i. \$500 for first 5 Network Nodes, \$100 for each additional node;
 - ii. \$1000 per Node Support Pole; and
 - iii. Unless otherwise precluded by law, \$200 for any other right-of-way construction permit.
- (d) *Permit Processing.* The director of public works shall determine whether an application is complete and notify the applicant of that determination within 10 days of receipt of the application. The director of public works shall approve or deny an application and provide notice and the specific basis for the denial to the applicant via electronic mail: (i) within 21 days of receipt of a complete application for transport facilities; (ii) within 90 days of receipt of a complete application for a node support pole, or (iii) within 60 days of receipt of a complete application for any other type of facility. The applicant may cure the deficiencies identified in the denial documentation and resubmit the application without paying an additional application fee if submitted within 30 days of denial; and the director of public works shall approve or deny the revised completed application after a denial within 90 days of receipt of the completed revised application. The director of public works’s review of the revised application is limited to the deficiencies cited in the denial documentation.

Sec. 78-186. - Construction regulations.

- (a) *Site Triangle.* It shall be unlawful for any person to place or maintain, or cause to be placed or maintained, any plant, object or vehicle having a height greater than three feet above the level of the center of the nearest abutting street on or in that portion of any corner lot in the city, which portion is included in a triangle on the street corner of the lot formed by a diagonal line intersecting the curblines, at points 25 feet from the street corner intersection of the curblines.
- (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) *Work hours.* Work for which a permit is required may be performed Monday through Friday at any time; provided however, any such permitted work performed within 500 feet of any residential structure may only be performed between the hours of 7:00 a.m. and 8:00 p.m. Any permitted work performed outside of the above working hours or on weekends must be approved in advance by the director of public works or his designee.
- (d) *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 construction standards adopted by the city or, if no construction standards are applicable, 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 structures such as sprinkler systems and mailboxes.
- (e) *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 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, including any and all required indirect administrative expenses incurred by city, including salary, benefits, and proportionate office expense. 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.

- (f) *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 director of public works 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.
- (g) *Closing of streets.* If a user's work requires the obstruction of any street for a period longer than 30 minutes, such obstruction shall be approved by director of public works, which approval may be conditioned on adequate traffic control measures. 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 director of public works 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 director of public works, such closing is necessary to protect the safety of the general public.
- (h) *Construction drawings.* Within 120 days following completion of construction, or within 120 days following any material alteration or modification thereto, the user shall supply the city with a complete set of as-built construction drawings for the work, or for the material alteration or modification thereof. 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.
- (i) *Workmanship; notice of damage.* Users are responsible for the workmanship and any damages caused by a contractor or subcontractor. All users shall notify the Director of public works immediately of any damage to utilities or other structures, either City or privately owned.
- (j) *Design Regulations.* All facilities shall comply with the City's construction codes and the Design Regulations as adopted at the time of the permit application.
- (k) *Prior approval required for street or sidewalk cut.* Except in the event of an emergency, prior approval must be obtained from the Director of public works when a street or sidewalk cut is required and all requirements of the City shall be followed. Repair of all street and sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

- (l) *Requests for temporary moves.* Upon request, the user shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the user may require payment in advance. The user shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangements.
- (m) *Timeliness.* All work authorized by permit must be completed within 180 days of issuance of the permit. If the work cannot be completed in the specified time period, the user may request an extension from the Director of public works.
- (n) *Tagging.* All facilities located in the public right-of-way shall be electronically tagged.
- (o) *Permit required to be on-site.* All users working within the right-of-way shall have a copy of the construction permit issued by the City that includes the business name of the company or person performing the work with them at all times.
- (p) *Fiber looping prohibited.* Users shall not cause or allow any cord, conduit, wire or similar portion of facilities to be looped or hang with more slack than absolutely necessary.

Sec. 78-187. - Conservation of public rights-of-way; conflict with other law.

To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a user to attach portions of its facilities to other facilities within the public rights-of-way owned and maintained by other persons.

Where this Article conflicts with any other provision of the City Code of Ordinances, this Article shall control. Where facilities are governed by the Texas Utilities Code or Chapter 283 of the Texas Local Government Code and there is a conflict with a specific provision of this Article, the provision of this Article shall not apply to those specific facilities to the extent of the conflict.

Sec. 78-188. - Relocation or removal of facilities.

To the extent the city may be authorized by law to do so, a user may be required to lower, place underground, relocate, or remove any facility within any public right-of-way, without cost to the city, if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal, or installation of any publicly funded city project within the city in, upon, or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, street lights, and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a user may be allowed to pay the additional costs incurred for the design and/or construction of any such publicly funded city project in a manner that would avoid the necessity of relocation or removal of the facilities. A user shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work, and accommodate suitable refinements and/or joint work with others. Provided, however the City retains the right to move any structures within the rights-of-way to cure or otherwise address a public health or safety emergency. The City shall cooperate to the extent possible with the user in such instances to assure continuity of service and to afford to the user the opportunity to make such relocation.

In the event of any such requirement for lowering, placing underground, relocating, or removing facilities as herein provided, the user shall complete same as soon as is reasonably practicable following written notice thereof by the city.

Sec. 78-189. - Obsolete facilities.

Users shall remove facilities from the public rights-of-way when such facilities are obsolete, are no longer in service, and create either visual blight or a nuisance to the public; provided however, a user shall not be required to remove any facility for which renovation or restoration is planned by the user, and which renovation or restoration is completed within a reasonable period of time. When permanent structures in public rights-of-way are removed, the city shall be notified in writing of such removal.

Sec. 78-190. - Bonding.

All users other than governmental units shall comply with all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.

Sec. 78-191. - Temporary rearrangement of aerial wires and cables.

Upon request, a user shall remove or raise or lower its aerial facilities temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting same, excluding requests by the city. The user may require payment in advance. The user shall be given a reasonable amount of advance notice to provide for such rearrangement.

Sec. 78-192. - Tree trimming.

Users shall comply with all applicable rules and regulations of the city governing the trimming, grooming, or removal of trees or other similar vegetative matter.

Sec. 78-193. - Erosion and storm water measures.

Erosion control measures shall be implemented prior to commencement of any work. The user shall comply with storm water management erosion control that complies with the city, state and federal laws, regulations, and guidelines. Requirements may include, but shall not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established and barricade fencing around open holes. High erosion areas shall require wire-backed silt fencing.

Sec. 78-194. - Placement of facilities.

Unless otherwise provided by law, all facilities constructed or installed on or after the effective date hereof shall be buried underground where possible. Except as otherwise provided herein, the installation and location of all facilities, including pedestals, junction boxes, metering facilities and similar appurtenances, constructed or installed above ground shall be approved by the city. Users shall not place facilities within public rights-of-way in such a manner as to interfere with existing electrical, cable, or telecommunications fixtures, water hydrants or mains, or drainage or sanitary sewer facilities, and all such facilities shall be placed in such manner as not to interfere with usual travel or public and/or municipal use of the public rights-of-way. The installation, repair, construction, maintenance, and replacement of facilities in the rights-of-way shall be subject to inspection by the city. Users shall cooperate fully with the city in conducting inspections. Users shall promptly perform remedial action required by the city pursuant to such inspection.

Sec. 78-195. - Line location and identification.

Users shall be responsible for obtaining line locations from the Texas One-Call System, the city, and all affected utilities and others with facilities in public right-of-way, prior to any excavation. Use of the geographic information system or plans of record shall not satisfy this requirement. The user shall be responsible for verifying the location, both horizontal and

vertical, of all facilities. When required by the director of public works, a user shall verify locations of potential conflicts with existing facilities by pot holing, hand digging, or other similar method, prior to any excavation or boring. Placement of all manholes and/or hand holes must be approved in advance by the director of public works. Hand holes or manholes shall not be located in sidewalks unless approved by the director of public works. Location flags shall not be removed while facilities are being constructed. All location flags shall be removed during the cleanup process by the user at completion of the work. The user, or his agent, contractor, or subcontractor, shall notify the director of public works immediately of any damage to other utilities.

Sec. 78-196. - Reserved.

Sec. 78-197. - Guarantee of performance.

Except as provided in section 78-190, each user, at the time of submission of its initial and each renewal registration application, shall file with the city a guarantee of performance of the user's obligations hereunder, whether to be performed by the user or any contractor or subcontractor on behalf of the user, to complete the installation of its facilities within the public rights-of-way in accordance with the permits and approved plans and specifications therefor. Where a user has multiple facilities in the right-of-way, the guarantee of performance is not required for each facility, provided the user supplies documentation with each facility application stating that the previously provided guarantee is current and still in force. Such guarantee shall be payable to the city, in the amount of \$50,000.00. Provided however, in the event a user, or a contractor or subcontractor performing work on behalf of a user, applies for a permit for work in which the estimated cost of restoration will exceed \$50,000.00, such user shall file a supplemental guarantee for such additional reconstruction costs. Such guarantee make take the form of a bond, an irrevocable letter of credit, or a statement of fiscal responsibility, as set forth below:

- (a) *Bonds.* A corporate surety bond issued by a corporate surety authorized to do business in the State of Texas. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety, nor may any intention not to renew be exercised by the surety until 60 days after receipt by the city, by certified mail, of written notice of such intent to cancel or to not renew." The rights reserved to the city with respect to the bond are in addition to all other rights of the city and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights of the city; or
- (b) *Letters of credit.* An irrevocable letter of credit, in a form approved by city council, addressed to the mayor, shall be issued by a federally insured commercial lending institution. The federally insured commercial institution on which the irrevocable letter of credit is to be drawn must be acceptable to the city. The irrevocable letter of credit shall contain the following endorsement: "At least sixty (60) days' prior written notice shall be given to the mayor by the financial institution of any intention to cancel, replace, fail to renew, or materially alter this irrevocable letter of credit. Such notice shall be given by certified mail to the mayor. The City of Stafford, Texas, may draw upon this irrevocable letter of credit by presentation of a draft at sight, accompanied by a written certificate signed by the mayor of the city, certifying that _____ (user) has failed to comply with provisions of ordinances applicable to _____ (user's) use of public rights-of-way within the City of Stafford, Texas."

After providing a user with 30 days advance written notice of any amount due and owing, and the user's failure to pay such amounts, the city may draw upon the irrevocable letter of credit by presentation of a draft at sight, on the lending institution, accompanied by a written

certificate signed by the mayor certifying that the user has failed to comply with the provisions of this article.

The user shall structure the irrevocable letter of credit in such a manner that if the city draws upon the irrevocable letter of credit and reduces the amount of available credit to an amount below \$50,000.00, the user shall replenish the irrevocable letter of credit to a minimum of \$50,000.00 within five calendar days after the available credit is reduced to an amount below \$50,000.00. The intent of this section is to ensure that the credit available to the city shall at no time fall below \$50,000.00; or

- (c) *Statement of fiscal responsibility.* Written evidence, in the form of its most recent audited financial statement, showing assets or reserves sufficient to cover the amount of the guarantee required by this section. If the user's assets or reserves are no longer adequate to comply with the amounts required by this section, the user shall immediately notify the city and shall obtain a bond or letter of credit as set forth above.

The rights reserved to the city with respect to the financial guarantees provided for in this section are in addition to all other rights of the city, whether reserved by this article or otherwise authorized by law, and no action, proceeding, or right with respect to the guarantee shall affect any other right the city has or may have.

Sec. 78-198. - Insurance and indemnity.

- (a) *Insurance.* A user shall procure and maintain insurance in full force and effect at all times while its facilities are located in the public rights-of-way. The insurance shall cover all risks associated with the use and occupancy of such rights-of-way. Coverages shall be on an "occurrence basis." The insurance requirements applicable to a user under this section shall be applicable to all persons performing work within public rights-of-way on behalf of such user unless such person is covered, or named as an additional insured, under the policies of insurance supplied by the user pursuant hereto. If any person other than a user is required to provide such insurance, the provisions referring to a user hereinbelow shall be construed to mean such person.

- (1) *Risks and limits of liability.* The insurance, at a minimum, must include the following coverages and limits of liability:

	Coverage	Limit of Liability
i)	Workers' compensation and employer's liability	Statutory
ii)	Employer's liability:	Bodily injury \$1,000,000 (each occurrence)
iii)	Commercial general liability	Combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate
	a) All premises/operations	
	b) Independent contractors	

	c)	Products/completed operations	
	d)	Personal and advertising injury	
	e)	Contractual liability	
	f)	Explosion, collapse and underground hazards	
iv)		Comprehensive automobile liability, including coverage for loading and unloading hazards for	Combined single limit for liability, including coverage bodily injury and property damage of \$1,000,000.00 per
	a)	Owned/leased vehicles	
	b)	Non-owned vehicles	
	c)	Hired automobiles	
v)		Excess Coverage	\$5,000,000.00 per occurrence/combined aggregate in excess of limits specified for employer's liability, commercial general liability, and automobile liability
Note: Aggregate limits are for a 12-month policy period, unless otherwise indicated			

- (2) *Form of policies.* The insurance may be in one or more policies of insurance, the form of which must be approved by the Texas Insurance Commission.
- (3) *Issuers of policies.* The issuer of any policy shall be authorized to transact insurance business in the State of Texas.
- (4) *Insured parties.* Each policy shall name the user and the city (and the officers, agents and employees of the city) as insured parties.
- (5) *Deductibles.* The user shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claims it may ever have for the deductible amounts against the city, its officers, agents or employees.
- (6) *Cancellation.* Each policy shall expressly state that it may not be canceled or non-renewed unless 30 days advance notice of cancellation or non-renewal is given in writing to the city.
- (7) *Subrogation.* Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the city, its officers, agents or employees.

- (8) *Liability for premium.* If any of the policies referred to above do not have a flat premium rate, and such premium has not been paid in full, such policy shall have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the user for any further premium payment and has no right to recover any premiums from the city.
 - (9) *"Other insurance" clause.* The insurance policy(ies) shall provide that the "other insurance" clause does not apply to the city where the city is shown on the policy as an additional insured.
 - (10) *Delivery of policies.* The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the user with the director of public works prior to commencement of any work. Failure on the part of the user to furnish a new policy or certified copy thereof before the expiration date of any such policy, or failure to obtain a new policy before the date fixed for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, shall constitute a violation hereunder.
 - (11) *Liability of user.* The city's approval, disapproval, or failure to act regarding any insurance supplied by a user shall not relieve such person from full responsibility or liability for damages and accidents arising out of use or occupancy of public right-of-way. Neither bankruptcy, insolvency nor denial of liability by the insurance company shall exonerate the user from liability.
 - (12) *Self-insurance.* A user may elect to self-insure to provide the insurance coverage required hereunder, subject to the restrictions set forth in this subsection, provided the user submits to the city copies of its certificates of self-insurance from the Texas Department of Insurance, and its most recent audited financial statements showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth above. A user shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a user's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If a user's self-insurance program ceases, or a user's assets or reserves are no longer sufficient to comply with the above coverage requirements, the user shall immediately notify the city of such lapse of coverage, and the user shall obtain commercial insurance, in accordance with the above requirements, within 30 days following such notice.
- (b) *Indemnity.* To the extent permitted by law, each user, and each person performing work within a public right-of-way as a contractor on behalf of a user, shall indemnify and hold the city harmless as set forth below. If any person other than a user is required to provide such indemnity, the provisions referring to a user hereinbelow shall be construed to mean such person.

The user shall promptly defend, indemnify, and hold the city harmless from and against all damages, costs, losses, or expenses (i) for the repair, replacement, or restoration of city's property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective solely as a result of the user's acts or omissions; and (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to, the user, its agents, officers, employees, and subcontractors, and the city, its agents, officers, and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to, the

officers, agents, and employees of the user, the user's contractors, and the city's officers, agents, and employees, and third parties), arising out of, incident to, concerning, or resulting from, the negligent or willful acts or omissions of the user, its officers, agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim or claims that the city was negligent in authorizing the user to use or occupy the public rights-of-way, in regulating the conduct of the user, or in failing to prevent the user from acting in a negligent or wrongful manner.

For purposes of this indemnification provision, acts or omissions of the officer, agents, employees and contractors of the user shall be considered the acts and omissions of the user.

The indemnity provision set forth above is solely for the benefit of the city and the user and is not intended to create or grant any rights, contractual or otherwise, to any other person.

The user shall indemnify and hold the City harmless from all costs, expenses, and damages to persons or property arising directly or indirectly from the construction, maintenance, repair, or operation of the user's facilities located within the rights-of-way found to be caused solely by the negligence of the user. Expenses shall include any reasonable and necessary attorney's fees and court costs. The City shall give the user prompt written notice of any claim for which the City seeks indemnification. The user shall have the right to investigate, defend and compromise any such claim. This provision is not intended to create a cause of action or liability for the benefit of third parties, but rather this provision is solely for the benefit of the City.

Sec. 78-199. - Revocation or denial of construction permits.

If any provision of this article is not followed, a permit for the construction of facilities may be revoked. If a person has not followed the terms and conditions of this article with respect to work done pursuant to a prior permit, new permits may be denied or additional terms may be required.

Sec. 78-200. - Appeals.

- (a) *Right of appeal.* A user may appeal an interpretation or application of any provision of this article, including the denial or revocation of a construction permit for facilities in the right-of-way, to the zoning board of adjustment on the basis that a specific provision of the city regulations, as applied or interpreted by the director of public works, is inconsistent with (i) State or Federal Law as applied specifically to a certain user or proposed facilities, or (ii) the intent of the regulations applicable to facilities located in the rights-of-way as adopted by city council.
- (b) *Appeals process.* An application for appeal under this section shall be submitted in writing to the city secretary and shall include: (i) documentation of the interpretation or application of the director of public works; (ii) an explanation of the basis for the appeal; (iii) a list of the specific sections of City Code relevant to the appeal; and (iv) copies of any permit applications submitted by the applicant in the past 90 days relevant to the appeal. Appeals shall be filed with the city secretary within 30 days from the date of the denial or revocation of any permit. A hearing shall be held within 30 days of the date the appeal is filed with the city secretary.

Sec. 78-201. - Conflicts with existing or future franchises.

In the event of conflict between the provisions of this article and any franchise or other written authorization heretofore or hereafter approved by city, the provisions of this article shall control. Provided however, any condition imposed pursuant to a zoning specific use permit shall be in addition to the requirements hereof.

Sec. 78-202. - Notice.

Any notice required to be given to city hereunder shall be given in writing, and may be effected by (i) personal delivery if delivered to the director of public works or his designee, (ii) by facsimile or electronic mail, if delivered to the director of public works and to the city secretary, or (iii) by United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the director of public works or his designee and the city secretary. No notice shall be deemed given until actual receipt by city as hereinabove set forth.

Sec. 78-203. - Penalties/remedies.

- (a) *Criminal penalty.* Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense. Prosecution for, and imposition of, criminal penalties under this subsection shall not bar the city from seeking other additional remedies as may be provided in this article, by law, or in equity.
- (b) *Civil penalties.* Civil penalties may be imposed for violation of any provision of this article, as follows:
 - (1) Up to \$1,000.00 for each violation, and each day of a continuing violation may be considered a new violation; and/or
 - (2) Revocation of any or all permits granted to allow work in public rights-of-way, subject to procedural guidelines provided in this article, any agreement which applies to the person subject to the complaint, and subject to any limitation imposed by federal or state law.

Sec. 78-204. – Design Regulations.

- (a) *Pole stability requirements.* Nodes, equipment cabinets, and poles shall be constructed based on an industry standard pole load analysis completed and submitted to the City indicating that the service pole or network support pole to which the network node is to be attached will safely support all proposed and existing equipment. Poles shall be constructed such that the foundation or anchoring mechanism is (i) sufficient for the type of soil in the proposed location, and (ii) sufficient to withstand typical area wind loads as identified by the adopted construction codes of the City. New poles shall not be made of wood.
- (b) *Minimum placement height.* For the safety of pedestrians, network nodes and other equipment placed on new and existing poles shall be placed more than twelve (12) feet above ground level. If a network node or other equipment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.
- (c) *Equipment size limitations.* All facilities shall be constructed and limited in size as follows:
 - (1) Each antenna without exposed elements (i) must be located inside an enclosure of not more than six cubic feet in volume; (ii) may not exceed a height of three feet above the existing structure or pole; and (iii) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

- (2) An antenna with exposed elements (i) must fit within an imaginary enclosure of not more than six cubic feet; (ii) may not exceed a height of three feet above the existing structure or pole; and (iii) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (3) Other wireless equipment associated with a network node may not: (i) be cumulatively more than 28 cubic feet in volume; or (ii) protrude from the outer circumference of the existing structure or pole by more than two feet;
- (4) Ground-equipment or ground based enclosures, separate from a pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches;
- (5) Pole-mounted enclosures may not be taller than five feet; and
- (6) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

Provided, however, the following types of associated ancillary equipment are not included in the calculation of equipment volume under this Section: (i) electric meters; (ii) concealment elements; (iii) telecommunications demarcation boxes; (iv) grounding equipment; (v) power transfer switches; (vi) cut-off switches; and (vii) vertical cable runs for the connection of power and other services.

- (d) *Installations near intersections.* A user shall not install new poles or ground equipment within the site triangle of any intersection, as such site triangles are identified using the method provided by the "Greenbook", *A Policy on Geometric Design of Highways and Streets* as most recently published by AASHTO. A user shall not install a network node within 25 feet of any intersection, as measured from the closest outside corner of the two intersecting streets.
- (e) *Installation near schools and parks.* For the safety of pedestrians, particularly small children, and to allow full line of sights near school property and Parks, a User shall not install ground equipment or new Poles within a Right-of-way inside the boundary line of school property or within 150 feet of the boundary line of school property. A User shall not install ground equipment within a Right-of-way inside the boundary line of a Park or within 150 feet of the boundary line of a Park.
- (f) *Installation of wires, conduits or cables.* Users shall utilize wires, conduits and cables that are grey or black in color on the load side of the electrical meter, unless located underground or otherwise colored to match the pole or surrounding area. Any facilities that include wires, conduits, or cables may be located underground, except where the Director of public works identifies based on the permit application that existing utility or other structures prevent the safe installation of the proposed structures underground. Where wires, conduits, or cables are installed aboveground, they shall be attached to existing Poles where possible and must not hang lower than fifteen feet six inches (15' 6") above ground level. New Poles installed to support aboveground wires, conduits, or cables shall comply with all location and construction requirements for new Poles.
- (g) *Installations in utility easements.* Structures may be installed in utility easements located across private property only where (i) the installation will not interfere with existing or planned utilities, and (ii) the underlying property owner grants written authorization, except where installation of facilities does not require installation of any ground equipment.
- (h) *Height limitation.* A user shall ensure that the vertical height of a facility installed in a public right-of-way does not exceed the lesser of: (i) 10 feet in height above the tallest existing

utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
(ii) 55 feet above ground level.

- (i) *Deed restrictions.* A user shall install, repair, construct, replace or upgrade facilities in a manner that complies with private deed restrictions.
- (j) *New pole locations and construction requirements.* New poles shall be located as close as possible to the outside edge of the right-of-way. New poles shall be spaced apart from existing poles by no less than 100 feet. New poles may not be located within one (1) foot of sidewalks, private driveways, pedestrian paths or bicycle paths.
- (k) *Designated areas.* Any permit application for facilities to be located in designated areas, as described by this section, must be accompanied with documentation showing proposed concealment measures similar to an existing structure that is within 1000 feet of the proposed location, and is not a nonconforming structure.
 - (1) *Historic Areas/Design Areas with decorative poles.* A user may not install a network node or node support pole in a public right-of-way without City council's written consent in accordance with Section (l) if the proposed location is in: (i) a designated historic district; (ii) an area in which the majority of the poles located within 500 feet are decorative or matching poles; or (iii) an area designated as a design district requiring all new poles to be decorative poles. Facilities shall comply with and observe all City, state, and federal historic preservation laws and requirements.
 - (2) *Parks.* A user may not install a new pole in a public right-of-way without City council's written consent in accordance with Section (l) if the proposed location is in a park.
 - (3) *Residential areas.* A user may not install a new pole in a public right-of-way without City council's written consent in accordance with Section (l) if the proposed location is adjacent to a street or thoroughfare that is: (i) not more than 50 feet wide; and (ii) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
 - (4) *Underground areas.* A user may not install transport facilities, a network node (except for the antennae), node support pole or ground equipment in a public right-of-way without City council's written consent in accordance with Section (l) if the proposed location is in an area in which: (i) all surrounding utilities within a 500 foot radius are underground; (ii) all surrounding utilities with the exception of electric utility poles and wires within a 1000 foot radius are underground; or (iii) all utility providers are required by the city, to the extent allowed by law, to install new facilities underground.
- (l) *Land Use Approval process.* The following shall constitute the process for obtaining advance written consent of City Council for installation of any facilities required to obtain such approval under this article.
 - (1) *Administrative approval.* The director of public works is designated authority to approve permit applications for proposed facilities to be located in a designated area on behalf of City Council under the following conditions:
 - i. All proposed facilities will be located underground;
 - ii. All proposed facilities will be located on an existing pole and painted to match the pole;
 - iii. A new pole is proposed to replace an existing pole and all other proposed facilities will be located on this pole and painted to match the pole in matte dark brown, grey, or dark green;

- iv. A new pole is proposed to be located on a lot line that is not in a driveway or parking lot and all other proposed facilities will be located on this pole and painted to match the pole in matte dark brown, grey, or dark green;
 - v. All proposed facilities will be contained in a decorative pole that, with the exception of containing a camouflaged network node, complies with the City's specifications for decorative light poles in the designated area and replaces an existing light pole; or
 - vi. All proposed facilities will be camouflaged to appear as vegetation.
- (2) *Application.* If land use approval is required in the proposed location as provided by this Article, the user shall submit documentation required for land use approval as part of the application for a right-of-way permit for construction of facilities in order for the application to be processed as a complete application. This documentation shall include the following: (i) plans or design specifications compliant with specific design criteria for an area (i.e. underground areas, decorative poles, or historic area design standards); (ii) the locations of all other above-ground buildings, structures, facilities and poles located within 1000 feet of the proposed location; and (iii) at least one photo of the nearest pole and one photo of the nearest building to the proposed location.
- (3) *Evaluation criteria.* Land use approval applications for facilities shall be evaluated using only the following criteria: (i) alternative locations available within 1000 feet for the specific type of facility being requested; (ii) concealment measures proposed for minimizing the impact of the proposed facilities on surrounding land uses; and (iii) reasonable conditions to the permit requested by landowners within 1000 feet of the proposed location.

Sec. 78-205. – Request for Special Exception.

A User that desires to deviate from any of the standards set forth in this article may submit a written request to the Zoning Board of Adjustment for a special exception. An application for special exception to any provision of this article shall include (i) the specific section number of this article to which an exception is requested, (ii) a detailed description of the work to be performed if the exception is granted, (iii) a statement and supporting documentation that the exception will not result in any increased interference with city operations, impact on nearby property owners, obstacle for other users of the right-of-way, or safety hazard for the general public.”

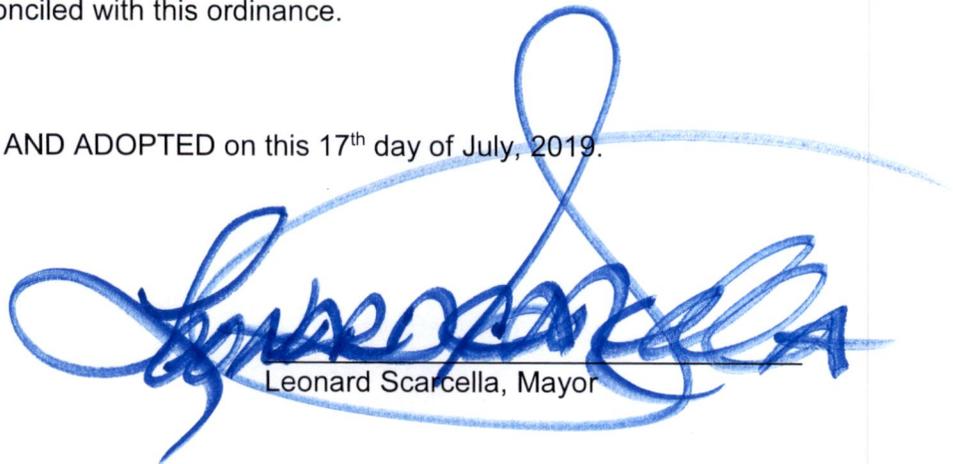
Section 4. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of Stafford, 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.

Section 5. This ordinance shall be effective immediately, except where a later date is expressly provided, upon adoption and publication of this ordinance or a caption that

summarizes the purpose of this ordinance and the penalty for violating this ordinance in every issue of the official newspaper for two days, or one issue of the newspaper if the official newspaper is a weekly paper, in accordance with Section 52.011 of the Texas Local Government Code.

Section 6. This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

PASSED, APPROVED, AND ADOPTED on this 17th day of July, 2019.



Leonard Scarcella, Mayor

ATTEST:



Tomika R. Lewis, City Secretary

APPROVED AS TO FORM:

Arthur L. Pertile, III, City Attorney