

ORDINANCE 2024-03

AN ORDINANCE FOR THE CITY OF HILLCREST VILLAGE TO REGULATE AND PERMIT THE USE OF RIGHT OF WAYS. AND TO SET FEES FOR RIGHT OF WAY PERMITS, SET INSURANCE STANDARDS, REGULATE THE CONSTRUCTION NOTIFICATIONS, CONSTRUCTION WORK BY THE CITY, FOR THE SAFETY AND WELFARE OF THE CITIZENS OF THE CITY OF HILLCREST VILLAGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILLCREST VILLAGE, BRAZORIA, TEXAS:

SECTION 1: PURPOSE

The purpose of this ordinance is to:

- a. Assist in the management of the right-of-way.
- b. Govern the use and occupancy of the right-of-way by property owners and telecommunication service providers.
- c. Ensure safety, proper drainage, and reasonable use.
- d. Secure fair and reasonable compensation for the use and occupancy of the right-of-way by telecommunications service providers in a nondiscriminatory and competitively neutral manner.

SECTION 2: DEFINITIONS

Whenever used in this article, the following terms, as well as their singular, plural and possessive, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise:

Access Line:

1. Each switched transmission path of the transmission media within the right-of-way extended to the end-user customer's premises network interface within the city that allows delivery of telecommunication services within the city; and
2. Each loop provided as an unbundled network element to a person pursuant to an agreement under Section 252 of the Federal Telecommunications Act of 1996; and
3. Each termination point of a non-switched telephone circuit consisting of transmission media connecting specific locations identified by, and provided to, the end-user for the delivery of non-switched telecommunication service within the city.

Cable service means a cable service as defined in the Cable Communications Policy Act of 1984 as amended, 47 U.S.C § 532 et seq.

City means the City of Hillcrest Village, Texas.

Culvert means a concrete structure that channels drainage allowing access from a public road to adjacent property, as approved by the Brazoria County engineer and the governing county drainage officials.

Direction of the City means all ordinances, laws, rules resolutions, and regulations of the City that are not inconsistent with this article and that are now in force or may hereafter be passed and adopted.

Facilities means any and all of the duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures, plant and appurtenances and all associated transmission media used for the provision of telecommunications service.

Grantee means any telecommunications service provider issued a municipal consent pursuant to the terms of this article that owns or places and maintains plant, equipment, facilities, or other property within the right-of-way that is used by the grantee or others for the purpose of offering telecommunication services and any person that desires to own plant, equipment, facilities, or other property within the right-of-way for the purpose of offering telecommunication services.

Line fee means a monthly fee to be applied to each residential or nonresidential access line owned or placed and maintained by a grantee to the city as compensation for the use and occupancy of the right-of-way.

Municipal consent means the right granted by ordinance to a person to use the public right-of-way to provide telecommunications services within the City.

Person means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

Public Utility means a public utility as that term is used in the Public Utility Regulatory Act of 1995, Tex. Utilities Code Ann. § 11.004, including municipally owned and/or operated utilities.

Right-of-way means all present and future public streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges, and other such similar passageways, throughfares, and public ways within the city.

Right-of-way fee means the total amount paid to the city on a quarterly basis by grantee for use and occupancy of the right-of-way.

Telecommunications service means the transmittal of voice, data, image, graphics, and other communications between or among points by wire, fiber optics, or other similar facilities, as well as the rental, lease, or furnishing of the facilities to accomplish such transmittal, but does not include the provision of the public of any "wireless service," as defined by law, and does not include long distance transmission (interLATA and intraLATA toll transmissions).

Telecommunications service provider means any person that supplies telecommunication services to others within the corporate limits of the city in exchange for money or other value.

Telecommunications utility means a telecommunications utility as used in the Public Utility Regulatory Act of 1995, Tex. Utilities Code Ann. § 51.002(11).

Transmission media means any and all of the cables, fibers, wires or other physical devices owned, maintained, or placed by a grantee to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, data or other purposes.

Use and Occupancy means the grantee's acquisition, installation, construction, reconstruction, maintenance, repair, control, or operation of any facilities within the right-of-way for any purpose whatsoever.

SECTION 3: GRANTING CLAUSE

a. Any person that owns, places or maintains facilities within the right-of-way shall first obtain municipal consent from the city.

b. Subject to the restriction set forth herein, the city under this article may issue municipal consent to telecommunications service providers for the purpose of regulating the use and occupancy of the public right-of-way in the city for the operation of a telecommunications system for the provision of access lines. By acceptance of municipal consent, the grantee agrees to abide by the reasonable terms of this article in all its operations within the city, including all operations and facilities and transmission media used in whole or in part in the provision of access lines in any newly annexed areas as specified in section 5 (b).

c. Any person that places a culvert within the right-of-way shall first obtain municipal consent from the city. The person shall file a written request with the city showing the exact location of the proposed culvert, the size of the culvert, and written approval from the Brazoria County Engineer and the governing drainage district, along with the application fee.

SECTION 4: GENERAL TERMS OF THE ARTICLE

- a. No rights agreed to in the article by the city shall be exclusive and the city reserves the right to grant franchises, licenses, easements, or permissions to use the right-of-way within the city to any person as the city, in its sole discretion, may determine to be in the public interest.
- b. A grantee is not authorized to provide cable service as a cable operator in the city under this article but must first obtain a franchise from the city for that purpose, under such terms and conditions as may be required by law.
- c. The initial term of each municipal consent issued under this article shall be three years from the date of issuance unless terminated earlier by mutual written agreement of the city and the grantee or pursuant to law. At the expiration of its initial period, a municipal consent shall be automatically extended for successive periods of one year each unless, at least 90 days prior to the expiration of such initial period of any extension thereof, most of the city council of the city votes at a n regular or special meeting thereof not to extend the municipal consent. Provided, no municipal consent shall be automatically extended so that its initial period and all extensions thereof exceed 50 years in the aggregate.
- d. The rights granted by this article insure to the benefit of the grantee approved hereunder. The ordinance rights granted by municipal consent shall not be assigned, transferred, or sold to another by the grantee without the express written consent of the city. For the purposes of this section, assignment, or transfer to entities that control, are controlled by or are under common control with grantee. Any such consent by the city shall not be withheld unreasonably.

SECTION 5: FEES; RIGHT-OF-WAY CHARGE

- a. All applications for permits to use city right-of-way for *non-franchise* utilities shall be assessed a fee of \$1,000.00, for *franchised* utilities shall be assessed a fee of \$200.00, for use other than utilities shall be assessed a fee of \$50. Permit fees shall be submitted with the application for permit. Application fees are nonrefundable.
- b. All owners or pipelines hereafter constructed within the city or hereafter constructed without permits from the village using public right-of-way within the city shall be subject to annual rental charges as set forth herein.
- c. Upon construction, reconstruction, extension, or alteration of any pipeline within the city right-of-way or on city property under a permit required by provisions of this ordinance, the grantee shall pay the city an annual fee or annual easement charge. Effective January 1, 2024, fees will be due and payable on or before January 1st of each calendar year and annual fees rates will be as follows:

1. Use of public right-of-way or city property:

a. First year, per rod: \$25.00

b. Annual renewal, per rod: \$40.00 for pipelines less than 24 inches in normal diameter; \$80.00 per pipelines equal to or greater than 24 inches in nominal diameter.

2. Payment of annual right-of-way fees or easement fees is cumulative of, and in addition to any initial permit fees.

3. Annual right-of-way fees shall not be assessed for simply perpendicular or angular street or ditch crossing.

4. Payments received after January 15th of each year shall be subject to a later charge at the maximum allowable rate of law.

d. Payment of the above fees shall be made at such time as the construction, extension, or laying of the pipeline shall commence, or in the case of pipelines already in place, shall be made within 90 days of the effective date of this section.

e. Number of access lines: Subject to the City's agreement not to disclose this information, each grantee must provide annually, within a reasonable time after receipt of the city's written request, a report showing the number of each type of access lines owned or placed and maintained by grantee that is serving end user customer's premises at month's end within the city for each of the preceding 12 months. The city agrees that the report shall be used solely for the purpose of verifying the number of the grantee's access lines serving end-user customer's premises withing the city. Upon written request, the grantee shall verify the information in the report and, upon reasonable notice, produce the city and permit inspection by the city of all non-customer-specific records and documents reasonably calculated to verify the information. The purposes of payment of fees for use of the right-of-way, lines terminating at customer's premises that are billed as "lifeline, "tel-assistance," or other service that is require to be similarly discounted pursuant to state or federal law or regulation for the purpose of advancing universal service to the economically disadvantaged shall not be include in the lines upon which the fee is calculated.

f. Annexation and disannexation: Within 30 days following the date of the passage of any action effecting the annexation of any property to or the disannexation of any property from the city's corporation boundaries, the city agrees to furnish grantee written notice of the action and an accurate map of the city's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the city under this article, a grantee shall start including or excluding access lines within the affected area in the grantee's count of access lines on the effective date designated by the comptroller of Public Accounts Texas for the imposition

of state local sales and use taxes; but in no case less than 30 days from the date the grantee is notified by the city of the annexation or disannexation.

g. Confidential records: If the grantee notifies the city of the confidential nature of any information, reports, documents, or writings, the city agrees to maintain the confidentiality of the information, reports, documents, and writings to the extent permitted by law. Upon receipt by the city of requests for the grantee's confidential information, reports, documents, or writings, the city shall notify the grantee of the request in writing by facsimile transmission. The city shall request an Attorney General's Opinion before disclosing any confidential information, reports, documents, or writings and will furnish the grantee with copies of the Attorney General's Opinion requests it makes pertaining to the grantee's confidential information, reports, documents, or writings.

h. No other fees. The payments due hereunder shall be in lieu of any permit, license approval, inspection, or other similar fees or charges, including, but not limited to, all general business license fees customarily assessed by the city for the use of the right-of-way against persons operating businesses similar to that of the grantee. Further, such right-of-way shall constitute full compensation to the city for all of grantee's facilities located within the right-of-way, including interoffice-transport and other transmission media that do not terminate at an end-user customer's network interface device, even though those types of lines are not used in the calculation of the right-of-way fees.

i. Timing of Payment. The grantee shall remit the line fee on a quarterly basis. The payment shall be due on the forty-fifth day following the close of each calendar quarter for which the payment is calculated.

j. Uncollectibles. The grantee has a statutory right to pass through to its customers on a pro rata basis any compensation paid to the city for access to the right-of-way. Any other provision of this article notwithstanding, permit holder shall not be obligated to pay the city for any access lines for which revenues remain uncollectible.

k. Facilities provided to other telecommunications service providers: To the extent allowed by applicable state and federal law, any telecommunications service providers that purchase unbundled network elements or other facilities for the purpose of unbundling those facilities to create telecommunications service for sale to persons within the city shall pay to the city a right-of-way fee that is calculated as a month-end by applying the appropriate line fee, as specified in Section 5 (a) above, to each access line created by rebounding services or facilities. Such direct payment to the city is necessary because it is only the person creating the services for resale that will be able to determine the number of access lines being provided, so that the right-of-way fee imposed herein can be applied on a nondiscriminatory basis to all telecommunications service providers that sell telecommunications services within the city. Other

provisions of this article notwithstanding, the permit holder shall not include in its monthly count of access lines any unbundled network elements or other facilities provided to other telecommunications service providers for rebundling into telecommunications services, if the telecommunications service provider that is rebundling those facilities for resale has provided a signed statement to the permit holder that if the telecommunications service provider is paying the access line fees applicable to those rebundled services directly to the city. If permit holder provides a copy of the signed statement to the city, then permit holder is absolved of all responsibility for the line fees payable on the telecommunications service, unbundled network elements, and other facilities rebundled for the creation of telecommunications service for sale with the city.

l. Fee application to leased facilities: Pursuant to Tex. Utilities Code § 54.206, a grantee may collect the line fee imposed by the city pursuant to this article through a pro rata charge to the customers in the boundaries of the city, including any other persons who are leasing, reselling or otherwise using the grantee's access lines to provide telecommunications service. With respect to any person leasing, reselling, or otherwise using a grantee's access lines, if a grantee believes it does not have sufficient information to determine the appropriate rate to apply, then the higher line fee shall apply until such time as the person using the access lines provides to the grantee sufficient written information to determine the correct line fee. If a person provides sufficient written information for the application of the line fee, the grantee may bill the person based on the information provided. Grantee shall provide to the city an information regarding the locations to which it is providing service or facilities for use by another person for the provision of telecommunications service to end-user customers, so long as the city first obtains written permission of such other person for the grantee to provide the information to the city. Any other provision of this article notwithstanding, however, a grantee shall not be liable for underpayment of line fees resulting from the grantee's reliance upon the written information proved by any person that uses grantee's service or facilities for the provision of telecommunications service to end-user customers.

SECTION 6: CONSTRUCTION AND MAINTENANCE OF FACILITIES AND CULVERTS

a. The location and route of all culverts, facilities and transmission media placed and constructed in the right-of-way shall be subject to the lawful, reasonable, and proper control and direction of the city.

b. Nothing contained in this article shall be construed to require or permit the attachment on or placement in the grantee's facilities of any electric light or power wires or communications facilities or other systems not owned by the grantee. If the city desires to attach or place electric light or power wires, communications facilities or other similar systems or facilities in or on the grantee's facilities, then a further separate, noncontingent agreement with the municipal consent shall be required.

c. The surface of the right-of-way disturbed by the grantee in the construction or maintenance of its telecommunications system shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work. The grantee shall endeavor to minimize disruptions to the efficient use of the right-of-way by pedestrian and vehicular traffic, and right-of-way shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work.

d. Upon request, the grantee shall remove or raise or lower its aerial wires, fiber, or cables temporarily to permit the moving of houses or other bulky structures. The party or parties requesting them shall pay the expense of such temporary rearrangements, and the grantee may require payment in advance. The grantee shall be given not less than 48 hours advance notice to arrange for such temporary rearrangements.

e. The grantee, its contractors and agents have the right, permission, and license to prudently trim trees upon and overhanging the right-of-way to prevent trees from coming in contact with the grantee's facilities and transmission media.

SECTION 7: RELOCATION AND REMOVAL OF FACILITIES OR CULVERTS

a. Upon 30 day notice by the city, the grantee shall begin relocation of its facilities or culverts within the right-of-way at its own expense to permit the widening or straightening of streets. The notice by the city shall include a specification of the new location for the grantee's culvert or facilities along with the right-of-way.

b. The city retains the right to move any facilities within the right-of-way to cure or otherwise address a public health or safety emergency. The city shall cooperate to the extent possible with the grantee in such instances to assure continuity of service and to afford the grantee the opportunity to make such relocation itself.

SECTION 8: INDEMNIFICATION

The grantee 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 grantee's facilities located within the right-of-way found to be caused solely by the negligence of the grantee. Expenses shall include any reasonable and necessary attorney's fees and court costs. The city shall give the grantee prompt written notice of any claim for which the city seeks indemnification. The grantee 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 grantee and the city.

SECTION 9: ADMINISTRATION OF ARTICLE

- a. The City may, at any time, make reasonable inquiries pertaining to the terms, conditions, rights and obligations of this article, and the grantee shall respond to such inquiries on a timely basis.
- b. Copies of the petitions, applications, and reports submitted by the grantee to the Federal Communications Commission, or the Public Utility commission of Texas shall be provided to the city upon specific request.
- c. After reasonable notice to the grantee, the city may establish, to the extent permitted by law, such reasonable and nondiscriminatory rules and regulations as may be appropriate for the administration of this article and the construction of the grantee's facilities in the right-of-way, so long as those rules and regulations are competitively neutral.

SECTION 10: FUTURE CONTINGENCY

In the event this article or any tariff or other provision that authorizes grantee to recover the fee provided for in this article, becomes unlawful or is declared or determined by a judicial or administrative authority exercising its jurisdiction to be excessive, unenforceable, void, or illegal, in whole or in part, then the city and all grantees shall negotiate a new compensation arrangement that is in compliance with the authority's decision. Unless explicitly prohibited, the new compensation arrangement shall provide the city with a level of compensation comparable to that set forth in this article, if that compensation is recoverable by grantees in a manner permitted by law for the unexpired portion of the term of this article.

SECTION 11: GOVERNING LAW

This article shall be construed in accordance with the city code in effect on the date of passage of this article to the extent that such code is not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 12: NONDISCRIMINATION AND COMPETITIVE NEUTRALITY

The city hereby recognizes that it has the legal duty to obligate, on a going-forward basis, all grantees to abide by the same terms and conditions imposed by this article, including, but not limited to, the payment of the line fee, and to apply substantively same requirements governing their use and occupancy of the right-of-way.

However, a grantee under this article shall waive its right to allege discrimination by the city for failure to regulate persons that exclusively provide to the public any "wireless service", as defined by law, including long distance.

SECTION 13: MUNICIPAL CONSENT

- a. Any telecommunications service provider that is currently authorized to use the city's right-of-way and that owns facilities already located within the right-of-way on the date this article is enacted shall be granted a municipal consent hereunder, however, within 30 days from the effective date of this article all such telecommunications service providers shall furnish the city a notice of preexisting facilities. All prospective grantees shall file a municipal consent application form at least 60 days before placing any facilities in the right-of-way. A municipal consent application form will not be accepted and municipal consent will not be granted unless the person applying provides on that form the name and address of the person to whom notices hereunder are to be sent, the date on which the person applying expects to begin providing service within the city, a 24 hour per day contact number for the person applying, and the certificate number of the certificate issued by the Public Utility Commission of Texas to the person applying or a notarized statement from a principal or officer of the person applying the no certification by the public utility commission is required for the type of service to be offered.
- b. Subject to grantee's right to maintain reasonable deductibles, utility grantees shall obtain and maintain in full force and effect for the duration of the utility grantee's municipal consent, at grantee's sole expense, insurance coverage in the following type and minimum amount:

Type	Amount
Workers' Compensation and Statutory Employer's Liability	\$100,000.000/\$500,000.00/\$100,000.00
Commercial General (public) Liability to include coverage for the following where the exposure exists:	
• Premises Operation	Combined single limit for bodily injury and property damage \$1,000,000.00 per occurrence or its equivalent
• Product/s Completed operations	
• Personal Injury	
• Contractual liability	
• Explosion, collapse, and underground property damage	
Comprehensive Automobile insurance coverage for loading and unloading hazards for:	Combined Single limit for bodily injury and property damage \$1,000.000.00 per occurrence or its equivalent
• Owned/leased automobiles	

• Non-owned automobiles	
• Hired automobiles	

c. The City shall be entitled, upon request and without expense, to receive copies of certificates of insurance evidence coverage stated above. The city may make any reasonable requests for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either city or grantee or upon the underwriter for any of such policies. Upon request for deletion, revision. Or modification by the office of the city manager, grantee shall exercise reasonable efforts to accomplish the changes.

d. All insurance certificates will contain the following required provisions: Name of the City of Hillcrest Village and its officers, employees, board members and elected representatives as additional insured parties (as the interests of each insured may appear) as to all applicable coverage (except worker's compensation); provide for 30 days' notice to the city for cancellation, nonrenewal, or material change; proved for notice to the office of the city manager by certified mail at City of Hillcrest Village, _____, Hillcrest Village, Texas _____; and, provide that all provisions of the municipal consent concerning liability, duty, and standard of care, including the indemnity section of this article, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions. Companies issuing the insurance policies, subject to policy terms and conditions. Companies issuing the insurance policies shall have no recourse against the city for payment of any premiums or assessments which all are set at the sole risk of the grantee. Insurance policies obtained by the grantee shall provide that the issuing company waives all right of recovery by way of subrogation against the city in connection with damage covered by these policies.

e. The city will accept self-insurance from a grantee that can show assets comparable to insurance companies rated A-VII or better by A.M. Best or A or better by Standards and Poors, so long as the grantee provides a letter of self- insurance agreeing to the same terms and conditions as required for insurance policies.

SECTION 16: UNAUTHORIZED USE OF PUBLIC RIGHT-OF-WAY UNLAWFUL.

In the event the city believes that an unauthorized use or other violation of this article has occurred, the city shall give the grantee written notice of the apparent violation, providing a short and concise statement of the nature and general facts of the violation, and shall provide grantee a reasonable period of time, not less than 30 days, in which to cure the alleged violation or provide a written response regarding the alleged violation. If the grantee fails to cure the alleged violation or provide satisfactory information, the city may file an appropriate pleading with the applicable judicial authority, including civil

or criminal liability and the grantee shall be provided notice and a reasonable opportunity to be heard concerning the alleged violation.

SECTION 17: PLACE OF PERFORMANCE AND VENUE.

Venue for any action at law or in equity concerning this article or any matter arising out of this article shall be in the City Municipal Court, State Courts of Brazoria County, Texas or the federal district courts having jurisdiction over Brazoria County, Texas.

SECTION 18: PENALTY, AND SAVING

Any person, firm, corporation, association, or other entity that violates any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not more than \$500.00 per each violation.

Nothing contained in this article shall cause any rights heretofore vested to be altered, affected, or impaired in any way and all such rights may be hereafter enforced as if this article had not been adopted.

This article is cumulative of and in addition to all other ordinances of the City of Hillcrest Village, Texas. However, upon the effective date of a municipal consent granted by the city under this article, any other ordinance or agreement specific to the grantee and relating to the same issues and obligations addressed herein is immediately repealed and waived. Notwithstanding, compensation still due to the city for the period in which the previous ordinance or agreement remained in effect shall be remitted as provided for therein. Further, where this article and another ordinance conflict or overlap, this article along with any subsequently granted municipal consent shall govern matters expressly addressed herein.

No offense committed and no fine, forfeiture or penalty incurred prior to the effective date of this article is to be affected by the adoption of this article but the punishment for any offense committed and the recovery of any fines or forfeiture incurred prior to such date shall take place as if this article had not been adopted.

SECTION 19: SEVERABILITY

In the event any section of this article is found to be unconstitutional, void, or inoperative by the final judgment of court or competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this article and such remaining sections and provision shall remain in full force and effect.

READ, PASSED, AND APPROVED THIS 18th DAY OF MARCH, 2024.


Kendal McGilvray, Mayor Pro Tem

ATTEST:


Amanda Blake, City Secretary