



Legislation Text

File #: DIS 21-045, **Version:** 1

Discussion of issues relating to an ordinance establishing a new Article IV-“Wireless Network Providers” for the purpose of regulating wireless network providers in City right-of-way.

Summary:

On February 2, 2021 staff discussed with council a proposed ordinance and design manual regulating Wireless Network Providers in City right-of-way. After receiving comments from a network provider questioning the legality of some requirements and fees staff hired Arturo Rodriguez, Jr. with Russell Rodriguez Hyde Bullock, L.L.P. Mr. Rodriguez worked with our city attorney and staff to amend the ordinance and design manual. The revised ordinance and design manual are attached for your consideration. The fees will be incorporated into the Appendix B-Schedule of fees, rates and charges.

History: In 2017, a coalition of around 40 cities sued the State of Texas to challenge the unconstitutionally low right-of-way rental fees brought about by the recent passing of S.B. 1004. The bill required cities to allow access to cellular companies for antennae and related equipment (“small cell nodes”) in city right-of-ways. The bill also entitled cell companies and others to place equipment on city light poles, traffic poles, street signs and other poles within the City. It was legislative action forcing cities to give away their valuable assets to private companies. In 2019, S.B. 1152 passed that authorized cable or phone companies to stop paying franchise fees. Both bills could lead to the complete elimination of all franchise fees in future sessions. Before the bills became effective, a coalition of cities and state leagues filed a lawsuit to overturn both bills. The U.S. Court of Appeals for the Tenth Circuit denied the coalitions motion to postpone the order while the lawsuit advanced. The Tenth Circuit court agreed to transfer the proceedings to the Ninth Circuit who is considered a more city-friendly venue for this type of dispute. While the proceedings move forward thru the courts, cities are diligently working to develop and adopt an ordinance and a Design Manual in order to better manage Wireless Network Providers within the City’s right-of-way.

Fiscal/Budgetary Impact:

Discussion item

For discussion only