

Use of City Right of Way and Other City Property for  
Infrastructure Related to Provision of Wireless Communications  
Services

Adopted: \_\_\_\_\_

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## I. GENERAL PURPOSE AND OBJECTIVES

The City of Fort Worth owns and holds in trust for the benefit of its citizens and other members of the public hundreds of miles of public right of way, numerous buildings and structures, and other property.

Neither federal nor state law provides wireless service providers or their affiliates with authority to use such property without the City's explicit consent as owner/trustee.

The purpose of this Policy is to establish the general terms and conditions under which the Fort Worth City Council will authorize execution of a license to use City property for the installation, operation, maintenance, repair, and replacement of infrastructure related to the provision of wireless communications services.

The City Council's intent is to allow the private sector and free-market competition to continue to serve as the primary resource for locations for placement of this type of infrastructure and to allow access to and use of City property only when no other alternative is available.

This policy is promulgated by the City as a property owner/trustee and not as a regulatory authority. This policy does not regulate or otherwise apply to property that is not owned by the City and that is used for installation of these types of infrastructure. However installations on other property must continue to comply with all applicable laws.

This policy does not apply to utilities operating within the scope of a City franchise or state-issued franchise or operating authority and of the laws applicable thereto.

## II. GENERAL CONDITIONS ON USE

Use of City property shall generally be limited to the subsurface of City land, including right of way.

Such use shall be limited to wiring and small appurtenances necessary to connect and/or support above-ground facilities that are sited on property owned by an entity other than the City.

Entities seeking use of City land shall be required to enter into a Right of Way Use Agreement in substantially the same form as the sample attached as Attachment A to this policy.

The license shall clearly identify the types and location(s) of allowed infrastructure.

**No use of City buildings, traffic signals, streetlights, or other facilities by third parties shall be authorized.**

### **III. EXCEPTIONS TO POLICY**

This policy shall not apply to the installation of infrastructure by or on behalf of the City to serve City needs.

In limited circumstances, City Council may authorize use that is outside of this policy, provided, however, that such use shall generally be limited to infrastructure serving (1) governmental entities; (2) non-commercial public purposes; or (3) public safety functions.

### **IV. COMPENSATION**

This type of use is not authorized or contemplated under existing federal or state law, and compensation models that exist under state law for traditional wire-based communications services that are allowed under such laws are calculated in a manner that, if applied to this type of use, would result in no compensation being paid for the use of public property. It is the City's position that such a result would violate Article III, Section 62 of the Texas Constitution, which prohibits a municipality from making a gift of public funds by granting any "thing of value in aid of, or to any individual, association or corporation."

Therefore, entities seeking to use City land, including right of way, under a license executed in accordance with the terms of this policy shall be required to pay the City's standard per-linear foot charge that is applicable to other non-utility right of way users such as gas-gathering pipelines. This fee is designed and calculated to recover the City's costs in administering this type of use and is adjusted annually to reflect the impact of the gross domestic product imputed price deflator as reported by the US Department of Labor.