



A G E N D A

**REGULAR MEETING
OF THE HIGHLAND VILLAGE CITY COUNCIL
TUESDAY, AUGUST 22, 2017, at 6:00 P.M.
HIGHLAND VILLAGE CITY COUNCIL CHAMBERS
1000 HIGHLAND VILLAGE ROAD, HIGHLAND VILLAGE, TEXAS**

**Convene Meeting in Open Session
Training Room – 6:00 P.M.**

**EARLY WORK SESSION
Training Room**

1. Discuss Design Manual for the Installation of Network Nodes and Node Support Poles
2. Provide Status on Board and Commission Applications
3. Clarification of Consent or Action Items listed on today's City Council Regular Meeting Agenda of August 22, 2017

(Items discussed during Early Work Session may be continued or moved to Open Session and/or Late Work Session if time does not permit holding or completing discussion of the item during Early Work Session)

**CLOSED SESSION
Training Room**

4. Hold a closed meeting in accordance with the following sections of the Texas Government Code:
 - (a) Section 551.071 – Consultation with City Attorney Concerning Pending or Contemplated Litigation and on any Regular Session or Work Session Agenda Item Requiring Confidential, Attorney/Client Advice Necessitated by the Deliberation or Discussion of Said Item (as needed)
 - (b) Section 551.074 – Deliberate the Appointment, Removal, Evaluation and Duties of Public Officers, specifically Members of the Planning and Zoning Commission, Zoning Board of Adjustment, Board of Directors of the Highland Village Community Development Corporation, and Board of Directors of the Denton County Transportation Authority

**OPEN SESSION
City Council Chambers – 7:30 P.M.**

5. Call to Order
6. Prayer to be led by Mayor Charlotte J. Wilcox

7. **Pledge of Allegiance to the U.S. and Texas Flags to be led by Mayor Charlotte J. Wilcox**
8. **Visitor Comments** *(Anyone wishing to address the City Council must complete a Speakers' Request form and return it to the City Secretary. In accordance with the Texas Open Meetings Act, the City Council is restricted in discussing or taking action on items not posted on the agenda. Action on your statement can only be taken at a future meeting. In order to expedite the flow of business and to provide all visitors the opportunity to speak, the Mayor may impose a three (3) minute limitation on any person addressing the City Council. A thirty (30) minute time allotment is set for this section, and the remaining speakers will be heard at the end of the Action Agenda.)*
9. **City Manager/Staff Reports**
 - **HVTV Update**
10. **Mayor and Council Reports on Items of Community Interest pursuant to Texas Government Code Section 551.0415 the City Council may report on the following items: (1) expression of thanks, congratulations or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming City Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety**

CONSENT AGENDA

All of the items on the Consent Agenda are considered for approval by a single motion and vote without discussion. Each Councilmember has the option of removing an item from this agenda so that it may be considered separately and/or adding any item from the Action Agenda to be considered as part of the Consent Agenda items.

11. **Consider Approval of Minutes of the Regular Meeting held on August 8, 2017 and the Special Meeting held on August 14, 2017**
12. **Consider Ordinance 2017-1230 Adopting Section 1.02.017 of the Code of Ordinances Establishing Monthly and Annual Limits on the Amount of Time Spent to Produce Public Information for a Requestor (2nd and final read)**
13. **Consider Ordinance 2017-1231 adopting Article 14.07 of the Code of Ordinances Establishing Regulations for Construction, Placement and Excavation in Rights-of-Way and Public Easements, providing for the adoption of design guidelines and establishment of certain fees, and repealing Divisions 3 and 4 of Article 14.02 of the Code of Ordinances (2nd and final read)**
14. **Consider Resolution 2017-2695 Awarding a Bid and Authorizing the City Manager to Negotiate and Sign a Contract for the Pilot Knoll Park Restroom Renovation Project**

ACTION AGENDA

15. **Take action, if any, on matters discussed in closed session in accordance with the following sections of the Texas Government Code:**
 - (a) **Section 551.071 – Consultation with City Attorney Concerning Pending or Contemplated Litigation and on any Regular Session or Work Session Agenda Item Requiring Confidential, Attorney/Client Advice Necessitated by the Deliberation or Discussion of Said Item (as needed)**
 - (c) (b) **Section 551.074 – Deliberate the Appointment, Removal, Evaluation and Duties of Public Officers, specifically Members of the Planning and Zoning Commission, Zoning Board of Adjustment, Board of Directors of the**

**Highland Village Community Development Corporation, and Board of
Directors of the Denton County Transportation Authority**

16. **Presentation of City Manager Recommended Budget for Fiscal Year 2017-2018**
17. **Conduct a Public Hearing on the Proposed Budget and Tax Rate for Fiscal Year 2017-2018**
18. **Consider Ordinance 2017-1232 Authorizing a Fee to Defray Costs of Collecting Delinquent Fines, Fees, Court Costs and Other Debts Pursuant to Article 103.0031 of the Texas Code of Criminal Procedure (1st of two reads)**
19. **Consider Resolution 2017-2697 Authorizing Agreements for Collection of Delinquent Utility Accounts and Delinquent Municipal Court Fines and Fees**
20. **Consider Resolution 2017-2696 Adopting a Design Manual for the Installation of Network Nodes and Node Support Poles in Public Rights-of-Way within the City**

LATE WORK SESSION

(Items may be discussed during Early Work Session, Time Permitting)

21. **Receive a Legislative Update**
22. **Status Reports on Current Projects and Discussion on Future Agenda Items (A Councilmember may inquire about a subject of which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.)**
 - **35Express Project Update**
23. **Adjournment**

I HEREBY CERTIFY THAT THIS NOTICE OF MEETING WAS POSTED ON THE PUBLIC BULLETIN BOARD AT THE MUNICIPAL COMPLEX, 1000 HIGHLAND VILLAGE ROAD, HIGHLAND VILLAGE, TEXAS IN ACCORDANCE WITH THE *TEXAS GOVERNMENT CODE, CHAPTER 551*, ON THE 18TH DAY OF AUGUST, 2017 NOT LATER THAN 4:00 P.M.


Angela Miller, City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's Office at (972) 899-5132 or Fax (972) 317-0237 for additional information.

Removed from posting on the _____ day of _____, 2017 at
_____ am / pm by _____.

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 1

MEETING DATE: 08/22/17

SUBJECT: Discuss Design Manual for the Installation of Network Nodes and Node Support Poles

PREPARED BY: Scott Kriston, Director of Public Works

BACKGROUND:

During its 85th Regular Session ending in May, 2017, the Texas Legislature enacted Chapter 284 of the Texas Local Government Code ("Chapter 284"). Chapter 284 relates to the installation of equipment, specifically wireless network equipment, in public rights-of-way. Chapter 284 provides a state-wide regulatory scheme regarding the installation of such equipment and limits individual cities' abilities to further regulate the location of such equipment within the public right-of-way. Such regulations are contrary to the historical right of Texas cities to regulate the improvements that are located with its streets and alleys and to levy a reasonable and fair charge for the use of public right-of-way by private businesses. Chapter 284 is applicable to the installation of "network nodes" (equipment that enables wireless communications between the communications network and the user's equipment) and related equipment, and applies to both the "wireless service provider" (who provides the service directly to the public) and to "network providers" (which are entities who do not provide service to the end-user, but instead build and install the equipment on behalf of a wireless service provider).

Cities may require that providers apply for a permit, and require compliance with the city's right-of-way management ordinance and design manual, but cannot apply zoning regulations to the installation of such equipment or require a license agreement. If providers desire to place equipment on city service poles (i.e. traffic lights, signage, light poles), a city can require a co-location agreement.

Cities are prohibited from enacting any type of moratorium relating to installation of equipment under Chapter 284, and there are specific time limitations which apply to the processing of applications. Chapter 284 is effective September 1, 2017, and provides that any current agreements or ordinances remain applicable to network nodes which are operational before that date.

Staff presented Ordinance 2017-1231 for consideration on August 8, 2017. First read of said Ordinance passed unanimously. During the presentation, staff notified the Council that the proposed Design Manual would be forthcoming at the August 22, 2017 meeting for consideration and approval. Chapter 14 "Public Ways and Public Places" of the Code of Ordinances, Division 7 "Network providers", Sec. 14.07.155 "Compliance with the Design Manual" identifies the City Council to adopt a Design Manual for the installation of Network Nodes and support poles.

The Director of Public Works, in consultation with the City Manager and City Attorney, has prepared a Design Manual for consideration which addresses the identified need, a copy of which will be provided prior to the council meeting.

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 2	MEETING DATE: 08/22/17
SUBJECT: Provide Status on Board and Commission Applications	
PREPARED BY: Angela Miller, City Secretary	

BACKGROUND:

City ordinance states that citizens interested in volunteering their time by serving on a board, commission or committee may submit an application to the City Secretary's Office for consideration by Council. Council shall make annual appointments to the City's boards and commissions no later than the second regularly scheduled Council meeting in September.

Each appointment is for a term of two years, unless an individual is appointed to fill a vacancy. A "term year" shall be from October 1 until the following September 30. The terms of the board and commission members shall expire on the 1st day of October of the second year or when their successor has been duly appointed for office.

Citizens appointed by Council are only allowed to serve four consecutive terms, with the exception of the board of directors for the Highland Village Community Development Corporation (4B). Per their Articles of Incorporation, no member shall serve more than three consecutive terms.

IDENTIFIED NEED/S:

There are twenty-two (22) positions with terms that expire on September 30, 2017, including one (1) vacancy on the Parks and Recreation Advisory Board. There is also a vacancy on the Planning and Zoning Commission, Alternate Place 2 that expires in 2018. The following is a list of Board and Commission member names and positions with terms that will expire on September 30, 2017.

BOARD OF ETHICS		
<i>Board Member Name</i>	<i>Board Choice</i>	<i>Place</i>
Richard Rega	Different Board	N/A
Latisha Davis	Does Not Wish to Serve Again	N/A
Pam Spooner	Does Not Wish to Serve Again	N/A
HV COMMUNITY DEVELOPMENT CORPORATION (4B)		
Michael Anderson	Same Board	Citizen Representative
Michelle Schwolert	Same Board	City Representative
Fred Busche	Same Board	City Representative
Barbara Fleming	Same Board	City Representative
PARKS AND RECREATION ADVISORY BOARD		
Gary Patz	Same or Different Board	Place 4
Tamara Lisby	Same Board	Place 5
Vacancy (Term Exp Sept 2017)	---	Alternate Place 1

PUBLIC ART ADVISORY BOARD		
Linda Pomeroy	Does Not Wish to Serve Again	Place 1
Lorraine Hayes	Does Not Wish to Serve Again	Place 2
Chas Foreman	Does Not Wish to Serve Again	Place 3
Michael Birdwell	Different Board	Alternate Place 1
PLANNING AND ZONING COMMISSION		
Richard Turner	Same Board	Place 1
DeeDee Rickets	Same Board	Place 4
Austin Adams	Same Board	Place 5
Thomas Heslep	Same Board	Alternate Place 1
Vacancy (Term Exp Sept 2018)	---	Alternate Place 2
ZONING BOARD OF ADJUSTMENT		
James Archibald	Does Not Wish to Serve Again	Place 1
Andrew Prychodko	No Response	Place 2
Thomas Peck	Same Board	Place 3
Christian Hart	Same Board	Alternate Place 1

OPTIONS & RESULTS:

During Early Work Session, Council will receive an update from staff and copies of all applications filed for their review and consideration. Staff proposes the Council host a “Meet and Greet” on September 12, 2017 to allow an opportunity for applicants to visit with Council. The annual appointments will be made by Council at the September 26, 2017 meeting.

PROGRESS TO DATE: (if appropriate)

A call for volunteers was advertised in the June, July and August utility bill inserts, the Summer Villager Newsletter, the City’s Facebook Page, HVTN News, and on the City’s website. To date, the City Secretary’s Office has received a total of thirty (30) applications, which include currently serving members who wish to be considered for reappointment.

Currently serving board/commission members were contacted and given the opportunity to notify the City Secretary’s Office if they were interested in being considered for reappointment.

- Twelve (12) members have expressed an interest to be considered for reappointment to their respective Board or Commission.
- Two (2) members have expressed an interest to be considered for appointment to a different Board or Commission.
- Six (6) members have expressed they do not wish to be reappointed.

In addition to the existing Board and Commission members, the City has sixteen (16) new applications on file for consideration by Council. A table listing all applicants (both current members & new) with their preferences is provided with this briefing.

BUDGETARY IMPACT/ORDINANCE CHANGE: (if appropriate)

N/A

RECOMMENDATION:

No action is required at this time. Staff is providing information as an update for Council.

BOARD AND COMMISSION MEMBER PREFERENCES

MEMBER NAME	CURRENT SERVICE	INTEREST IN REAPPOINTMENT	ETHICS BOARD	HVCDC	PARKS BOARD	P&Z	ART BOARD	ZBA
ETHICS BOARD								
Richard Rega	Ethics Board	Different Board	5	4	3	2	6	1
Latisha Davis	Ethics Board	No						
Pam Spooner	Ethics Board	No						
HVCDC (4B)								
Michael Anderson	City Representative	Same Board	3	1	5	4	6	2
Michelle Schwolert	Council Representative	Same Board	-	1	-	-	-	-
Fred Busche	Council Representative	Same Board	-	1	-	-	-	-
Barbara Fleming	Council Representative	Same Board	-	1	-	-	-	-
PARKS & RECREATION ADVISORY BOARD								
Gary Patz	Place 4	Same or Different Board	-	-	-	-	1	-
Tamara Lisby	Place 5	Same Board	2	4	1	3	5	6
Vacancy	Alternate Place 1							
PUBLIC ART ADVISORY BOARD								
Linda Pomeroy	Place 1	No						
Loraine Hayes	Place 2	No						
Chas Foreman	Place 3	No						
Michael Birdwell	Alternate Place 1	Different Board	3	4	6	5	2	1

BOARD AND COMMISSION MEMBER PREFERENCES

MEMBER NAME	CURRENT SERVICE	INTEREST IN REAPPOINTMENT	ETHICS BOARD	HVCDC	PARKS BOARD	P&Z	ART BOARD	ZBA
PLANNING & ZONING COMMISSION								
Richard Turner	Place 1	Same Board	5	4	3	1	-	2
Deedee Rickets	Place 4	Same Board	5	4	2	1	6	3
Austin Adams	Place 5	Same Board	-	-	-	1	-	-
Thomas Heslep	Alternate Place 1	Same Board	-	-	3	1	-	2
Vacancy (Term Exp 2018)	Alternate Place 2							
ZONING BOARD of ADJUSTMENT								
James Archibald	Place 1	No						
Andrew Prychodko	Place 2	No Response						
Thomas Peck	Place 3	Same Board	5	3	4	1	6	2
Christian Hart	Alternate Place 1	Same Board	-	-	-	-	-	1

BOARD AND COMMISSION APPLICANT PREFERENCES

APPLICANT NAME	ETHICS BOARD	HVDCD	PARKS BOARD	P&Z	ART BOARD	ZBA
John Blaney	5	2	4	1	6	3
Vanessa Boyd	2	3	1	5	4	6
James Burmeister	1	-	-	-	-	-
Dale Butler	4	1	2	5	6	3
Thomas Dickinson	6	5	3	1	4	2
Robert Fiester	5	4	3	1	6	2
Janet Gershenfeld	-	-	1	-	2	-
Diana Kalinowska	3	4	2	5	1	6
Denver Kemerry	-	-	-	1	-	2
Kenneth Koonsman	-	2	1	-	-	-
Kevin McMahan	1	3	4	2	-	5
William Meek	6	4	1	2	5	3
Warren Miluk	6	2	1	4	3	5
James Romo	4	2	5	1	6	3
Guy Skinner	-	-	-	-	-	-
Benjamin Somero	1	-	-	-	-	-

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 7 **MEETING DATE: 08/22/17**

SUBJECT: Pledge of Allegiance

PREPARED BY: Angela Miller, City Secretary

COMMENTS

A Councilmember will lead the Pledge of Allegiance to the U.S. and Texas Flags.

The Pledge to the Texas Flag is as follows:

“Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.”

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 10

MEETING DATE: 08/22/17

SUBJECT: Mayor and Council Reports on Items of Community Interest

PREPARED BY: Angela Miller, City Secretary

COMMENTS

Pursuant to Texas Government Code Section 551.0415 the City Council may report on the following items: (1) expression of thanks, congratulations or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming City Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety.

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 11

MEETING DATE: 08/22/17

SUBJECT: Consider Approval of Minutes of the Regular Meeting held on August 8, 2017 and the Special Meeting held on August 14, 2017

PREPARED BY: Angela Miller, City Secretary

BACKGROUND:

Minutes are approved by a majority vote of Council at the Council meetings and listed on the Consent Agenda.

IDENTIFIED NEED/S:

Council is encouraged to call the City Secretary's Office prior to the meeting with suggested changes. Upon doing so, staff will make suggested changes and the minutes may be left on the Consent Agenda in order to contribute to a time efficient meeting. If the change is substantial in nature, a copy of the suggested change will be provided to Council for consideration prior to the vote.

OPTIONS & RESULTS:

The City Council should review and consider approval of the minutes. Council's vote and approval of the minutes reflect agreement with the accuracy of the minutes.

PROGRESS TO DATE: (if appropriate)

The City Manager has reviewed the minutes and given approval to include the minutes in this packet.

BUDGETARY IMPACT/ORDINANCE CHANGE: (if appropriate)

N/A

RECOMMENDATION:

To approve the August 8, 2017 and August 14, 2017 City Council meeting minutes.

**MINUTES OF THE REGULAR MEETING OF THE
HIGHLAND VILLAGE CITY COUNCIL
HELD AT THE HIGHLAND VILLAGE MUNICIPAL COMPLEX
LOCATED AT 1000 HIGHLAND VILLAGE ROAD
TUESDAY, AUGUST 8, 2017**

The City Council of the City of Highland Village, Texas met in Early Work Session on the 8th day of August, 2017 prior to the Regular Council Meeting.

Call to Order

Mayor Charlotte J. Wilcox called the meeting to order at 6:00 p.m.

Roll Call

Present:	Charlotte J. Wilcox Michelle Schwolert Mike Lombardo Barbara Fleming Fred Busche Daniel Jaworski	Mayor Mayor Pro Tem Councilmember Deputy Mayor Pro Tem Councilmember Councilmember
Absent:	John McGee	Councilmember
Staff Members:	Michael Leavitt Kevin Laughlin Ken Heerman Angela Miller Doug Reim Scott Kriston Linda Cornelius Laurie Mullens Andrew Boyd Karen Bradley	City Manager City Attorney Assistant City Manager City Secretary Police Chief Public Works Director Parks and Recreation Director Public Affairs Manager Media Specialist Administrative Assistant

EARLY WORK SESSION

1. Discuss the Utility Fund Budget and Follow Up Discussion on the General Fund Budget and Special Revenue Funds for Fiscal Year 2017-2018

Assistant City Manager Ken Heerman reported water and sewer revenues are closely on target with staff projections. Relating to the Utility Working Capital summary, operations costs for FY 2016-2017 are a little higher due to the \$133,000 cost for pump repairs and reinstall of the Southwood Water Well. Mr. Heerman stated expenditures for next year shows an increase of \$300,000 due to capital projects, which will be slated annually from Operations revenue to fund needed projects without having to accrue any debt. The ending fund balance is projected at 78 days, rather than the preferred 80-90 days. The projected five year outlook does show projections to be in the mid-80s, which is based on the new rate structure.

The following items were proposed in the Utility Fund Supplemental Requests for Fiscal Year 2017-2018:

- ❖ Fence Installation at Lift Stations #7 and #8 - \$20,000
- ❖ Tractor Camera Replacement - \$35,000
- ❖ Pressurized Water Line Camera - \$70,000 (this was delayed until FY 2019)

Mr. Heerman reported a utility bond will be considered in conjunction with the November 2017 bond election; however it will be addressed separately as it is supported by utility funds. Projects include:

- ❖ Water Line Replacement
- ❖ Wastewater System Restoration
- ❖ Sewer Line Replacement
- ❖ Painting Southwood Water Tank

Mr. Heerman provided information on salaries and benefits. He reported, based on the city's linear miles of utility lines, the American Water Works Association (AWWA) Benchmark recommends twenty (20) positions; the City is currently at seventeen (17) positions and has remained at that number for the last ten (10) years.

2. Discuss Ordering a Bond Election to be held in the City of Highland Village on November 7, 2017

Mr. Heerman stated in the Capital Improvement Program budget submitted to Council in June, several capital projects were identified for consideration of a bond election referendum of Highland Village residents for issuance of municipal bonds. Direction from City Council during budget discussions was to slate November 2017 to hold an election to address reconstruction of several Highland Village streets, improvements to Unity Park, Sunset Park, Brazos Park Parking Lot extension, Victoria Park Walking Trail / Track, and Highland Village Road Trail segment.

Mr. Heerman reported reduction in Debt Service starting in FY 2017 provides a window to consider new debt issuance without the need to increase the tax rate. For the identified projects, General Obligation bonds, rather than Certificates of Obligation are suggested due to inclusion of various parks amenities. General Obligation bonds are used to finance only those assets which have been determined to be essential in the development of the City, and are generally utilized for new initiatives such as City facilities or programs to validate general support of city residents.

In order to have an election in November, the City Council must adopt a resolution to call, or order, the election. The election must be ordered not later than 90 days or earlier than 78 days prior to Election Day. This leaves a window of Wednesday, August 9 through Monday, August 21 to order the election. Since this falls outside of the regular meeting schedule for Council, staff is seeking direction from Council to set a date for a special meeting to order the election.

Council designated Monday, August 14 at 5:30 p.m. for a Special Meeting to consider ordering a bond election.

3. Discuss Collection of Delinquent Court and Utility Fees

Mr. Heerman reported with issued citations, a defined process through the Municipal Court allows an opportunity to pay the associated fine or dispute the charges with the Municipal Judge or if requested, a jury comprised of Highland Village residents. If the ultimate disposition results in a fine, defendants have an opportunity to pay the fine or set up time payments with the Court.

The Municipal Court makes a concerted effort to provide opportunity for defendants to satisfy their obligations and avoid warrant status. When a payment is missed during the payment plan, the court sends the defendant a Notice to Appear for a Show Cause hearing, at which time the defendant may go before the judge to explain the missed payment and get back on the payment plan to avoid a warrant being issued. If the defendant fails to appear at the show cause hearing, a Capias Pro Fine warrant is issued at which time the amount owed will increase by \$50.00 for the warrant fee. If the

defendant does not respond to the initial late notice by the response date, then an Arrest Warrant is issued.

Once a warrant is issued, it is sent to the PD Dispatch for entry into the Regional Database which is controlled by the Dallas Marshalls Office where the warrant will remain active for the next 3 years or until the defendant is arrested during that time. Once the 3 year mark is up and no arrest has been made, the warrant is pulled from Regional and returned to the court for either further collection attempts or administrative closure. Often, further collection attempts are unsuccessful due to the fact that the offense occurred more than 3 years prior and the court has old contact information from the original citation. At year end FY 2016, the outstanding warrants totaled \$105,965.

Mr. Heerman also reported the City has delinquent receivables associated with uncollected utility billing charges. While the City has authority to suspend service until the account is paid, our practice has been to not take this action unless payment has not been received for the current month as well as the following month charges. Especially during summer months, this can amount to a substantial balance due. Some of these accounts will leave the City with these outstanding charges, with little recourse for the City to collect on these. At Year-end FY 2016, the Over-120 day delinquent balance totaled \$325,130.

The City currently contracts with Perdue Bandon Fielder Collins & Mott LLP for collection of delinquent property taxes. They are one of the largest, most-experienced firms in the State with collection of delinquent receivables, and specifically, their performance on behalf of the City has been excellent. In addition to delinquent property tax, they also provide collection services for Court and Utility. Adding these services to our contract is proposed for Council consideration.

Council directed staff to move forward with a contract for collection of delinquent court and utility fees.

4. Clarification of Consent or Action Items listed on today's City Council Regular Meeting Agenda of August 8, 2017

Relating to Agenda Item #19, Councilmember Jaworski asked for clarification on how the process works. Assistant City Manager Ken Heerman reported the tax rate in the ordinance can be less than the rate contained in the motion, but cannot be greater than said rate.

Relating to Agenda Item #15, City Manager Michael Leavitt reported the lowest total base bid and add alternate bid received for the overlay project was \$126,916; there is \$200,000 budgeted for the project. If council does approve, Mr. Leavitt reported staff will look at potentially adding a project (a 25% increase is allowed). Mr. Leavitt has asked Public Works Director Scott Kriston to look at other potential areas for street repairs.

Mayor Wilcox announced Council would convene into Closed Session and she read Agenda Item #5.

CLOSED SESSION

Council convened into Closed Session at 6:55 p.m.

5. Hold a closed meeting in accordance with the following sections of the Texas Government Code:

Section 551.071 – Consultation with City Attorney Concerning Pending or Contemplated Litigation including a potential suit regarding the provisions of

SB 1004 approved in the 85th Regular Session of the Texas Legislature and on any Regular Session or Work Session Agenda Item Requiring Confidential, Attorney/Client Advice Necessitated by the Deliberation or Discussion of Said Item (as needed)

Council concluded Closed Session at 7:19 p.m. and returned to open session.

Early Work Session ended at 7:20 p.m.

OPEN SESSION

6. Call to Order

Mayor Charlotte J. Wilcox called the meeting to order at 7:30 p.m.

Roll Call

Present:	Charlotte J. Wilcox	Mayor
	Michelle Schwolert	Mayor Pro Tem
	Mike Lombardo	Councilmember
	Barbara Fleming	Deputy Mayor Pro Tem
	Fred Busche	Councilmember
	Daniel Jaworski	Councilmember
Absent:	John McGee	Councilmember
Staff Members:	Michael Leavitt	City Manager
	Kevin Laughlin	City Attorney
	Ken Heerman	Assistant City Manager
	Angela Miller	City Secretary
	Doug Reim	Police Chief
	Scott Kriston	Public Works Director
	Laurie Mullens	Public Affairs Manager
	Andrew Boyd	Media Specialist

7. Prayer to be led by Councilmember Dan Jaworski

Councilmember Jaworski gave the invocation.

8. Pledge of Allegiance to the U.S. and Texas Flags to be led by Councilmember Dan Jaworski

Councilmember Jaworski led the pledge to the U.S. and Texas flags.

9. Visitor Comments

No one wished to speak.

10. City Manager/Staff Reports

• HVTV Update

Highland Village Lions Club Balloon Festival – this is the 30th year for the festival, which will be held on August 18-20 at Unity Park; in addition to the hot air balloons, there will be a Kids Zone, live music, food vendors, car show, and arts/crafts booths

Highland Village Utility Rate Change – the City has maintained the same utility rate for water and sewer services since 2007; a new rate structure will take effect in October and will provide sufficient revenue to fund associated expenditures for water and wastewater costs; the average residential bill will increase approximately \$20/month

Farmers Market – a European-Style Farmers Market is now open in the Highland Village Town Center every Sunday from 10:00 a.m. to 2:00 p.m. featuring fresh produce, Texas meats, prepared foods, specialty foods, beauty and skin care, arts and accessories

Adopt a Pet – check out www.HVPets.com to see all the loveable pets in the shelter that are in need of a good home; contact the Highland Village Pet Shelter to set up an appointment to meet your new pet

11. **Mayor and Council Reports on Items of Community Interest pursuant to Texas Government Code Section 551.0415 the City Council may report on the following items: (1) expression of thanks, congratulations or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming City Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety**

Deputy Mayor Pro Tem Fleming invited everyone to come out for the Lions Club Balloon Festival on August 18 – 21 at Unity Park. She also invited Council to participate in the opening ceremony on Friday, August 18 at 6:30 p.m. and to participate in the announcement of the poster contest winners on Saturday, August 19 at 6:30 p.m.

Councilmember Busche reminded everyone to be responsible and clean up after your pet when visiting the dog park.

- **Proclamation – Blood Cancer Awareness Month**

Mayor Wilcox presented Alexis Meyer from the North Texas Chapter of The Leukemia & Lymphoma Society a proclamation declaring September as Blood Cancer Awareness Month.

- **Announcement of the Annual Steaks & Stetsons Fundraising Event**

Police Chief Doug Reim reminded everyone of the Annual Steaks & Stetsons Fundraising Event benefitting Special Olympics Texas. The event will be held on Saturday, September 9 at 6:00 p.m. at the Circle R Ranch located in Flower Mound. Tickets are still available and proceeds from this event go to supporting 5,300 adults and children with intellectual disabilities from 10 counties in the Greater Fort Worth area.

Special Olympics Texas is a nonprofit organization that provides year-round training and athletic competition for more than 58,300 children and adults. Chief Reim reported last year's event raised almost \$80,000. Special Olympics Athlete Colby Bannister also spoke regarding the event stating the Special Olympics has helped him set & achieve goals, and has changed his life by opening opportunities for him. Colby is 31 years old and has served on the Special Olympics Texas Board of Directors for 6 years.

CONSENT AGENDA

12. **Consider Approval of Minutes of the Regular Meeting held on July 28, 2017**
13. **Consider Ordinance 2017-1229 Adopting Amendments to the Fiscal Year 2016-2017 Budget (2nd and final read)**

14. Consider Resolution 2017-2692 Authorizing the Purchase of Mowing Equipment for the Parks and Recreation Department through the City's Cooperative Purchasing Agreement with Texas Local Government Purchasing Cooperative (BuyBoard) and Authorizing the Purchase of One (1) Police Vehicle through the City's Cooperative Purchasing Agreement with the State of Texas Purchasing Co-op (TxSmartBuy)
15. Consider Resolution 2017-2694 Awarding and Authorizing a Contract with Reynolds Asphalt & Construction Company for the 2017 Asphalt Overlay Project
16. Receive Investment Report for the Quarter Ending June 30, 2017
17. Receive Budget Report for Period Ending June 30, 2017

Motion by Councilmember Lombardo, seconded by Councilmember Jaworski, to approve Consent Agenda Items #12 through #17. Motion carried 6-0.

ACTION AGENDA

18. Take action, if any, on matters discussed in closed session in accordance with the following sections of the Texas Government Code:
 Section 551.071 – Consultation with City Attorney Concerning Pending or Contemplated Litigation including a potential suit regarding the provisions of SB 1004 approved in the 85th Regular Session of the Texas Legislature and on any Regular Session or Work Session Agenda Item Requiring Confidential, Attorney/Client Advice Necessitated by the Deliberation or Discussion of Said Item (as needed)

Motion by Councilmember Busche, seconded by Deputy Mayor Pro Tem Fleming, that the City Manager be authorized to hire the law firm of Bickerstaff Heath Delgado Acosta LLP to represent the City, along with other Texas cities, in litigation challenging the constitutionality of part or all of Chapter 284 of the Texas Local Government Code enacted during the 85th Regular Session of the Texas Legislature as Senate Bill 1004. Motion carried 6-0.

19. Discuss Ad Valorem Tax Rate for Tax Year 2017 and Consider Taking a Record Vote if Proposed Tax Rate Exceeds the Lower of the Rollback or the Effective Tax Rate and Consider Setting Two Public Hearing Dates of August 22, 2017 and September 12, 2017 on the Proposed Fiscal Year 2017-2018 Budget and Tax Rate
RECORD VOTE TAKEN (6 – 0)

Assistant City Manager Ken Heerman advised that Truth in Taxation requires two public hearings before implementing a property tax rate if a rate is considered which will exceed the lower of the rollback or effective rate. He explained that as the City's current tax rate of \$0.56963 exceeds both the effective rate of \$0.54305 and rollback rate of \$0.568022, Council must vote to place a proposal to adopt the rate on the agenda of a future meeting as an action item for any rate that exceeds the effective tax rate of \$0.54305. Mr. Heerman advised that this vote does not commit Council to a tax rate; however, the Council cannot ultimately adopt a tax rate that exceeds the rate that is proposed in the motion approved by the Council. He explained that the vote must be a record vote and the motion must specify the desired rate.

Motion by Councilmember Jaworski, seconded by Councilmember Busche, that \$0.568022 per \$100 valuation be proposed for adoption as the City's Ad Valorem tax rate for the 2017 tax year and set August 22, 2017, and September 12, 2017, as

the dates for holding the public hearings to receive public comment on said tax rate and the 2017-2018 fiscal year budget.

City Secretary Angela Miller took a roll call vote on the motion:

Councilmember Lombardo - Aye

Mayor Pro Tem Schwolert - Aye

Mayor Wilcox - Aye

Councilmember Busche - Aye

Deputy Mayor Pro Tem Fleming – Aye

Councilmember Jaworski - Aye

Councilmember McGee was absent. Motion carried 6-0.

- 20. Consider Ordinance 2017-1230 Adopting Section 1.02.017 of the Code of Ordinances Establishing Monthly and Annual Limits on the Amount of Time Spent to Produce Public Information for a Requestor (1st of two reads)**

APPROVED 1ST READ (6 – 0)

City Secretary Angela Miller reported during the 85th Regular Session of the Texas Legislature, H.B. 3107 was passed amending the Public Information Act to allow government entities to establish reasonable monthly and yearly limits on the amount of time that personnel of the governmental entity is required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time. H.B. 3107 allows City's to address harassing, repetitive, and/or redundant public information requests asking for a large amount of information (known as "vexatious requests"), which can impose great financial and time burdens on a City. Vexatious requests typically require City personnel to divert their time spent on normal tasks to locate, compile, and reproduce the requested information.

A *yearly time limit* established may not be less than thirty-six (36) hours for a requestor during a twelve-month period that corresponds to the fiscal year of the City. A *monthly time limit* established may not be less than fifteen (15) hours for a requestor for a one-month period beginning on the 1st date of each month. Ms. Miller reported the City's ordinances do not currently have provisions setting a time limit for requestors and proposed Ordinance 2017-1230 would establish that any requestor of public information will be charged personnel costs in accordance with Texas Government Code for all time in excess of thirty-six (36) hours in any given twelve-month period commencing on October 1 of each year or fifteen (15) hours in a given monthly period commencing on the 1st date of each month.

Motion by Deputy Mayor Pro Tem Fleming, seconded by Mayor Wilcox, to approve the first read of Ordinance 2017-1230 adopting Section 1.02.017 of the Code of Ordinances Establishing Monthly and Annual Limits on the Amount of Time Spent to Produce Public Information for a Requestor. Motion carried 6-0.

- 21. Consider Ordinance 2017-1231 adopting Article 14.07 of the Code of Ordinances Establishing Regulations for Construction, Placement and Excavation in Rights-of-Way and Public Easements, providing for the adoption of design guidelines and establishment of certain fees, and repealing Divisions 3 and 4 of Article 14.02 of the Code of Ordinances (1st of two reads)**

APPROVED 1ST READ (6 – 0)

City Manager Michael Leavitt reported during their 85th Regular Session, the Texas Legislature enacted Chapter 284 of the Texas Local Government Code which relates to the installation of equipment, specifically wireless network equipment, in public rights-of-

way. Chapter 284 limits individual cities' abilities to regulate the location of such equipment. This is contrary to the historical right of Texas cities to regulate the improvements that are located within its streets and alleys and to levy a reasonable and fair charge for the use of public right-of-way by private businesses. Proposed Ordinance 2017-1231 establishes regulations for construction, placement and excavation of city rights-of-way and public easements and adopts fees for the administration of the right-of-way management ordinance.

Councilmember Jaworski asked why this would not go through the Planning and Zoning Commission. City Attorney Kevin Laughlin stated this is not a zoning regulation; this ordinance enacts the rate schedule that is established by state law and caps what cities are allowed to charge. Mr. Leavitt reported a comprehensive revision to the City's right-of-way management regulations will be presented to Council in the near future.

Motion by Councilmember Jaworski, seconded by Deputy Mayor Pro Tem Fleming, to approve first read of Ordinance 2017-1231 adopting Article 14.07 of the Code of Ordinances Establishing Regulations for Construction, Placement and Excavation in Rights-of-Way and Public Easements, providing for the adoption of design guidelines and establishment of certain fees, and repealing Divisions 3 and 4 of Article 14.02 of the Code of Ordinances. Motion carried 6-0.

LATE WORK SESSION

22. Discuss Potential Date(s) for Town Hall Meeting

Mr. Leavitt stated Council had previously mentioned holding a Town Hall Meeting regarding the recent utility rate increase and future bond election. He suggested meeting in mid to late September. After some discussion, the consensus of Council was to hold a meeting on September 14 at the Municipal Complex or DuVall Center, with September 18 as a secondary date, if needed. Deputy Mayor Pro Tem Fleming stated she would be out of town on September 18.

23. Status Reports on Current Projects and Discussion on Future Agenda Items (A Councilmember may inquire about a subject of which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.)

35Express Project Update

Mr. Leavitt provided the following update:

The August Monthly Report will be the final update on the 35Express project as almost all major operations are scheduled to be completed this month.

The final surface paving for the northbound and southbound I-35E main lanes will continue through late summer. There will be various nightly main lane closures along the I-35E corridor for this work and motorists should be prepared for short term uneven pavement conditions and rough surfaces.

The Oak Drive/Lake Dallas Drive intersection has opened. The northbound to southbound U-turn at the intersection will open in August.

The additional northbound and southbound I-35E main lanes, frontage road lanes and pedestrian/bike paths on the Lewisville Lake bridges are scheduled to open this summer.

Work on Highland Village Road at the southbound I-35E frontage road is scheduled to be completed in August.

Work on Copperas Branch Park and Highland Lakes Park has begun and is scheduled for completion this summer.

24. Adjournment

Mayor Wilcox adjourned the meeting at 8:40 p.m.

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

**MINUTES OF THE SPECIAL CALLED MEETING OF THE
HIGHLAND VILLAGE CITY COUNCIL
HELD AT THE HIGHLAND VILLAGE MUNITIPCAL COMPLEX – TRAINING ROOM
1000 HIGHLAND VILLAGE ROAD
MONDAY, AUGUST 14, 2017**

The City Council of the City of Highland Village, Texas met for a Special Called Meeting on the 14th day of August, 2017.

1. Call to Order

Mayor Charlotte J. Wilcox called the meeting to order at 5:30 p.m.

Roll Call

Present:	Charlotte J. Wilcox	Mayor
	Michelle Schwolert	Mayor Pro Tem
	Mike Lombardo	Councilmember
	Barbara Fleming	Deputy Mayor Pro Tem
	Fred Busche	Councilmember
	Daniel Jaworski	Councilmember
Absent:	John McGee	Councilmember
Staff Members:	Michael Leavitt	City Manager
	Ken Heerman	Assistant City Manager
	Angela Miller	City Secretary
	Scott Kriston	Public Works Director
	Laurie Mullens	Public Affairs Manager
	Andrew Boyd	Media Specialist

2. Consider Resolution 2017-2693 Ordering a Bond Election to be held in the City of Highland Village on November 7, 2017

City Manager Michael Leavitt reported the City of Highland Village proposed November 7, 2017 bond election will have two propositions:

Proposition A - The issuance of \$2,860,000 general obligation bonds for street improvements. Proposed street improvements include the following streets:

Street Improvement Bonds – First Grouping (\$2.5M)	
Rosedale Street	Springway Drive
Ranier Court	Mockingbird Drive
Catesby Place	Post Oak Drive
Rockland Drive	Pecan
Hickory Ridge Drive	Raintree Drive
Oak Forest Drive	Greensprings Street
Winding Creek Drive	Duvall
Dickinson Drive	Baird Circle
S Clearwater Drive	Donna Circle
Scenic Drive	Savanna Drive
N Clearwater Drive	Arbor Court

Proposition B - The issuance of \$4,290,000 general obligation bonds for park and recreation improvements. Proposed park improvements include the following:

Total Proposed Parks Bonds		
Unity Park Improvements:		\$2,546,931
~ Softball Field/General Improvements	\$1,021,250	
~Pond Improvements	\$ 925,431	
~Kids Kastle	\$ 600,250	
Brazos Parking Lot Extension		\$ 353,000
Victoria Park Walking Trail Re-Surface		\$ 198,000
HV Road Trail (City Hall to Sellmeyer)		\$ 922,300
Sunset Point Park		\$ 162,700
TOTAL Proposed Parks		\$4,182,931

Mr. Leavitt reported this can all be done without the need for any tax increase. He then presented a public education plan relating to the November 7, 2017 bond election, which includes information on the City's website, social media, video, HVTU Update, brochures that will be mailed to residents, City Connections, and a Town Hall Meeting scheduled for September 14 at 7:00 p.m.

Motion by Councilmember Jaworski, seconded by Councilmember Busche, to approve Resolution 2017-2693 ordering a bond election to be held in the City of Highland Village on November 7, 2017. Motion carried 6-0.

3. Visitor Comments

No one wished to speak.

4. Adjournment

Mayor Wilcox adjourned the meeting at 5:46 p.m.

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 12

MEETING DATE: 08/22/17

SUBJECT: Consider Ordinance 2017-1230 Adopting Section 1.02.017 of the Code of Ordinances Establishing Monthly and Annual Limits on the Amount of Time Spent to Produce Public Information for a Requestor

PREPARED BY: Angela Miller, City Secretary

BACKGROUND:

During the 85th Regular Session of the Texas Legislature, H.B. 3107 was passed amending the Public Information Act to allow government entities to establish reasonable monthly and yearly limits on the amount of time that personnel of the governmental entity is required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time.

H.B. 3107 allows City's to address harassing, repetitive, and/or redundant public information requests asking for a large amount of information (known as "vexatious requests"), which can impose great financial and time burdens on a City. Vexatious requests typically require City personnel to divert their time spent on normal tasks to locate, compile, and reproduce the requested information.

A *yearly time limit* established may not be less than thirty-six (36) hours for a requestor during a twelve-month period that corresponds to the fiscal year of the City. A *monthly time limit* established may not be less than fifteen (15) hours for a requestor for a one-month period beginning on the 1st date of each month.

IDENTIFIED NEED/S:

The City's ordinances do not currently have provisions setting a time limit for requestors. Proposed Ordinance 2017-1230 establishes that any requestor of public information will be charged personnel costs in accordance with Texas Government Code for all time in excess of thirty-six (36) hours in any given twelve-month period commencing on October 1 of each year or fifteen (15) hours in a given monthly period commencing on the 1st date of each month.

PROGRESS TO DATE: (if appropriate)

Council approved the first read of Ordinance 2017-1230 at their August 8, 2017 meeting.

BUDGETARY IMPACT/ORDINANCE CHANGE: (if appropriate)

There is the potential to recover the City's costs attributable to personnel time spent on certain public information requests.

RECOMMENDATION:

To approve a second read of Ordinance 2017-1230 establishing monthly and annual limits on the amount of time spent to produce public information for a requestor.

CITY OF HIGHLAND VILLAGE, TEXAS

ORDINANCE NO. 2017-1230

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY OF HIGHLAND VILLAGE, CHAPTER 1 "GENERAL PROVISIONS," ARTICLE 1.02 "RECORDS MANAGEMENT," BY ADDING SECTION 1.02.017 "TIME LIMITS FOR RESPONDING TO CERTAIN REQUESTS" ESTABLISHING MONTHLY AND ANNUAL TIME LIMITS ON TIME SPENT BY CITY PERSONNEL ON RESPONDING TO A REQUESTOR OF PUBLIC INFORMATION; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, during the 85th Regular Session of the Texas Legislature, the Texas Legislature passed H.B. 3107 amending the Public Information Act (Chapter 552 of the Texas Government Code) to allow government entities to establish reasonable monthly and yearly limits on the amount of time that personnel of the governmental entity is required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time; and

WHEREAS, harassing, repetitive, and/or redundant public information requests asking for a large amount of information (known as "vexatious requests") can impose great financial and time burdens on the City, as vexatious requests typically require City personnel to divert their time spent on normal tasks to locate, compile, and reproduce the requested information; and

WHEREAS, the City Council of the City of Highland Village, Texas, finds it to be in the public interest to amend Chapter 1 "General Provisions," Article 1.02 "Records Management" of the Code of Ordinances by adding Section 1.02.017 "Time Limits for Responding to Requests that Require Large Amounts of Personnel Time" to establish reasonable monthly and yearly limits on the amount of time that City personnel is required to spend producing public information for inspection or duplication by a Requestor, or providing copies of public information to a requestor, without recovering the City's costs attributable to that personnel time.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, THAT:

SECTION 1. Chapter 1 "General Provisions," Article 1.02 "Records Management" of the Code of Ordinances of the City of Highland Village, Texas, is hereby amended by adding Section 1.02.017 "Time Limits for Responding to Certain Requests" to read as follows:

Sec. 1.02.017 Time Limits for Responding to Certain Requests

(a) Annual time limit. Pursuant to Texas Government Code sec. 552.275(a) and (b), thirty-six (36) hours is the reasonable limit on the amount of time that personnel of the City are required to spend producing public information for inspection or duplication by a Requestor, or providing copies of public information to a Requestor in any given twelve-month period commencing on October 1 of each year, without recovering the City's costs attributable to that personnel time.

(b) Monthly Time Limit. Pursuant to Texas Government Code sec. 552.275(a) and (b), fifteen (15) hours is the reasonable limit on the amount of time that personnel of the City are required to spend producing public information for inspection or duplication by a Requestor, or providing copies of public information to a Requestor in any given monthly period commencing on the 1st date of each month, without recovering the City's costs attributable to that personnel time.

(c) Records of Time Spent Fulfilling Requests. The Records Management Officer and/or designee shall be responsible for maintaining records of the cumulative amount of personnel time spent complying with requests for public information from each individual Requestor.

(d) Charges for Personnel Time Spent in Excess of Time Limits. Notwithstanding any provision of this section to the contrary, any Requestor of public information will be charged personnel costs in accordance with Texas Government Code sec. 552.275 for all time in excess of thirty-six (36) hours in any given twelve-month period commencing on October 1 of each year or fifteen (15) hours in a given monthly period commencing on the 1st date of each month, spent by personnel of the City in producing public information for inspection or duplication by a Requestor, or providing copies of public information to a requestor. The Records Management Officer shall be responsible for providing all notices to the Requestor as required by law, including written statements of accrued time required by Texas Government Code sec. 552.275(d) and written estimates of charges required by Texas Government Code sec. 552.275(e).

(e) "Requestor" defined. For purposes of this section, "Requestor" shall have the meaning set forth in Texas Government Code sec. 552.003(6).

SECTION 2. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinance as a whole.

SECTION 3. This ordinance shall take effect upon its passage on Second Reading and publication of the caption in accordance with the provisions of the Charter of the City of Highland Village and shall be applicable to all public information requests received by the City on or after September 1, 2017, and it is accordingly so ordained.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON FIRST READING ON THIS THE 8TH DAY OF AUGUST, 2017.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE,
TEXAS, ON SECOND READING ON THIS THE 22ND DAY OF AUGUST, 2017**

APPROVED:

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, City Attorney
(JPD:8/2/17:88704)

CITY OF HIGHLAND VILLAGE

COUNCIL BRIEFING

AGENDA# 13

MEETING DATE: 08/08/17

SUBJECT: Consider Ordinance 2017-1231 Amending Code of Ordinances Chapter 14 “Public Ways and Public Places” by Adding Article 14.07 “Right-of-Way Management” Establishing Regulations for Construction, Placement, and Excavation in Rights-of-Way and Public Easements; Providing for the Adoption of Fees for the Administration of the Right-of-Way Management Ordinance; and Amending or Repealing Conflicting Ordinances Including Division 3 and Division 4 of Article 14.02 of the Code of Ordinances

**PREPARED BY: Scott Kriston, Director of Public Works
Kevin B. Laughlin, City Attorney**

BACKGROUND:

During its 85th Regular Session ending in May, 2017, the Texas Legislature enacted Chapter 284 of the Texas Local Government Code (“Chapter 284”). Chapter 284 relates to the installation of equipment, specifically wireless network equipment, in public rights-of-way. Chapter 284 provides a state-wide regulatory scheme regarding the installation of such equipment and limits individual cities’ abilities to further regulate to location of such equipment within the public right-of-way. Such regulations are contrary the historical right of Texas cities to regulate the improvements that are located with its streets and alleys and to levy a reasonable and fair charge for the use of public right-of-way by private businesses. Chapter 284 is applicable to the installation of “network nodes” (equipment that enables wireless communications between the communications network and the user’s equipment) and related equipment, and applies to both the “wireless service provider” (who provides the service directly to the public) and to “network providers” (which are entities who do not provide service to the end-user, but instead build and install the equipment on behalf of a wireless service provider).

Chapter 284 limits the fees that may be charged to a wireless service provider or network provide to (1) an application or permit fee calculated based on the equipment installed in accordance with a formula set forth in Chapter 284, and (2) an annual fee limited to \$250 times the number of network nodes installed in the city’s right-of-way. Cities may require that providers apply for a permit, and require compliance with the city’s right-of-way management ordinance and design manual, but cannot apply zoning regulations to the installation of such equipment or require a license agreement. If providers desire to place equipment on city service poles (i.e. traffic lights, signage, light poles), a city can require a collocation agreement. In the event the city owns and operates a city-run electric or telephone utility, the City-owned utility may negotiate with the provider on a pole-attachment agreement, subject to the provisions of Chapter 284.

Cities are prohibited from enacting any type of moratorium relating to installation of equipment

under Chapter 284, and there are specific time limitations which apply to the processing of applications. Chapter 284 is effective September 1, 2017, and provides that any current agreements or ordinances remain applicable to network nodes which are operational before that date. For all network nodes installed and operational on or after September 1, 2017, any current ordinances or agreements that do not comply with Chapter 284 must be amended to comply with the provisions of Chapter 284 no later than March 1, 2018.

IDENTIFIED NEED/S:

In reviewing the City's current right-of-way management ordinance in light of the enactment of Chapter 284, City Administration has determined that current regulations do not adequately address numerous issues relating to management of the improvements that may be located in the City's rights-of-way, let alone address the provisions of Chapter 284. Therefore, City Administration is recommending a comprehensive revision to the City's right-of-way management regulations. Having been approached by at least two network providers earlier in 2017 seeking to locate network nodes within the City's rights-of-way, City Administration anticipates that on or after September 1, 2017, the same network providers, along with others, will demand the right to start placing wireless equipment along City streets. Thus, there is a need to update the City's regulations by adoption of an ordinance before September 1, 2017.

PROGRESS TO DATE:

The City Attorney, in consultation with the City Manager and Director of Public Works, is preparing an ordinance for consideration which addresses the identified need, a copy of which will be provided prior to the council meeting. First read of Ordinance 2017-1231 was approved by Council at their August 8, 2017 meeting.

BUDGETARY IMPACT/ORDINANCE CHANGE: (if appropriate)

Unknown.

RECOMMENDATION:

Approve second reading of Ordinance 2017-1231

CITY OF HIGHLAND VILLAGE, TEXAS

ORDINANCE NO. 2017-1231

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, THE CITY OF HIGHLAND VILLAGE CODE OF ORDINANCES CHAPTER 14 "PUBLIC WAYS AND PUBLIC PLACES" BY ADDING ARTICLE 14.07 "RIGHT-OF-WAY MANAGEMENT" ESTABLISHING REGULATIONS FOR CONSTRUCTION, PLACEMENT, AND EXCAVATION IN RIGHTS-OF-WAY AND PUBLIC EASEMENTS;; AMENDING OR REPEALING CONFLICTING ORDINANCES INCLUDING DIVISION 3 AND DIVISION 4 OF ARTICLE 14.02 OF THE CODE OF ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS PER VIOLATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Highland Village (the "City") is a Home-Rule Municipality located in Denton County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas; and

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

WHEREAS, the City Council of the City (the "City Council") has determined that excavations in City streets may significantly interfere with the public use of the streets and resulting in negative impact to public safety, air quality, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, the City Council finds excavations in paved streets significantly degrades and shortens the life of the surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance, and repair; and

WHEREAS, the City Council has determined that substantial public funds have been invested to build, maintain and repair the City streets and utilities and the City holds these streets and utilities as an asset in trust for its citizens; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of City streets and safeguard the value of the public investment of the benefit of City residents by providing incentives to reduce the number of excavations in City streets, which will also reduce the number of service disruptions and excavations; and

WHEREAS, the City Council has determined that adoption of a right-of-way ordinance will comply with and promote the regulations in Chapter 283 of the Texas Local Government Code pertaining to Certificated Telecommunications Providers as well as the Texas Utilities Code and Chapter 284 of the Texas Local Government Code; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS:

SECTION 1. The Code of Ordinances of the City of Highland Village, Texas, be and the same is hereby amended by amending Chapter 14 “Public Ways and Public Places” by adding Article 14.07 “Right-of-Way Management” to read as follows:

ARTICLE 14.07 RIGHT-OF-WAY MANAGEMENT

DIVISION 1. STANDARDS

Sec. 14.07.01 Thoroughfare and circulation design standards

Ordinances concerning the establishment of engineering design standards and construction design requirements in effect at the time of adoption of this Article, as amended, are incorporated by reference as if set forth herein.

Sec. 14.07.02 Construction standards for paving and drainage facilities

Ordinances concerning general construction standards for paving and drainage facilities, in effect at the time of adoption of this Article, as amended, are incorporated by reference as if set forth herein.

Sec. 14.07.03 Exclusive control of streets

No entity, including other political subdivisions of the state, may extend a street into the City’s corporate limits or connect a street to an existing City street without the prior written approval of the City Council.

DIVISION 2 RIGHT-OF-WAY MANAGEMENT

Sec. 14.07.10 Administration

The right-of-way manager appointed by the City Manager is the principal City official responsible for the administration of the right-of-way, right-of-way permits, the regulation of same and ordinances related thereto including, but not limited to, the provisions of this article. The right-of-way manager may delegate any or all of the duties set forth in this Article. The right-of-way manager shall have the duties, responsibilities and authority as specified for the right-of-way manager stated in this article.

Sec. 14.07.11 Definitions

As used in this article, the following terms, phrases, words, abbreviations and their derivations shall have the following meanings:

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee means the fee established by resolution of the City Council from time to time, included in the City’s master fee schedule, and charged by the City to recover its costs incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way

permit applications; inspecting job sites and restoration improvements; determining the adequacy of the right-of-way restoration; revoking right-of-way permits and other costs the City may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means that area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill means the following:

- (1) The placement of new dirt, fill, or other material to refill an excavation;
or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certificated Telecommunications Provider or "CTP" means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code ch. 283 or "the Act".

City project means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the City, or its designee, in the public right-of-way or on any City utilities or City facilities.

City utilities means any water, sewer or drainage line or services owned and operated by the City.

Compaction refers to consolidating backfill material in a trench to prevent future settlement.

Comprehensive plan means the City's comprehensive plan, as it exists or may be amended.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the right-of-way. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the right-of-way.

Contractor means any public or private person, subcontractor or organization, other than the City.

Day means business day unless otherwise specified.

Department means the City Department of Public Works or a successor Department that is responsible for management of the right-of-way and roadway infrastructure.

Emergency operations are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of the right-of-way.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, handholes and wires located under, on, or above the surface of the ground within the right-of-way, and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the mayor and the City Council of the City of Highland Village, Texas.

Governmental entity means any county, township, City, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday shall refer to days in which City offices are closed in observance of a holiday.

Main line shall refer to lines other than service connections used to convey the right-of-way user's product.

Major project means any project, which includes 50 or more linear feet of excavation or any excavation under pavement.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

Network Provider means a wireless service provider, or a person that does not provide wireless services and that is not an electric utility but builds or installs, on behalf of a wireless service provider, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

Pavement shall refer to streets containing Portland cement, asphalt, brick or other rigid or semi-rigid material that covers the surface of a street and their underlying subgrade and base.

Permit means a permit issued under this article authorizing excavation in the right-of-way.

Permittee means any person or right-of-way user to whom a permit is issued to excavate a right-of-way.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the City.

Provider means a person, including any certificated telecommunications utility and excluding Network Providers, as defined herein, that delivers telecommunications service within the City to person(s) by way of a network and that places facilities in, on or over the public rights-of-way. A provider does not include persons who are authorized by the City to occupy the public rights-of-way in specifically approved routes within the City, unless they also have a municipal consent under this article. To the extent allowed by law, "provider" also means a person that does not deliver telecommunications service within the City, but who uses, constructs or maintains facilities or transmission media within the public rights-of-way.

Public inconvenience penalty shall refer to a penalty assessed to the right-of-way user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means the Public Utility Commission of Texas.

Registration means the application process of the right-of-way user to use any portion of the right-of-way.

Registration certificate shall refer to the document provided by the City, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around excavation where the pavement and subgrade is impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way means the surface of, and the space above and below, any street, road, highway, freeway, tollway, lane, path, drainageway, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other

easement now or hereafter held by the City or over which the City exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the City, but shall specifically excludes private property.

Right-of-way manager means the right-of-way manager of the City, or his designee.

Right-of-way user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection shall refer to the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the right-of-way, whether fee or easement, that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface mounted markers refers to any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Technical construction standards and specifications or "TCSS" shall have the same meaning as set forth in Section 1.16 of the Highland Village Subdivision Ordinance, as amended,

Thoroughfare means all roadways and streets classified on the City's comprehensive plan, as it exists or may be amended, including but not limited to as a highway, tollway, major thoroughfare, minor thoroughfare, major collector, minor collector or local collector.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, as it exists or may be amended.

Traffic control representative shall refer to the designated representative of the right-of-way user who is responsible for work zone safety and compliance with TMUTCD. The right-of-way user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

Transport Facility means 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.

Trench shall refer to excavation deeper than 12 inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act shall refer to the V.T.C.A., Utilities Code sec. 251.001 et seq. as it exists or may be amended.

Utility means any privately or publicly owned entity which uses right-of-way to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility location in order to further identify the site.

Wireless service means 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.

Wireless service provider means a person that provides wireless services to the public.

Sec. 14.07.11 Utility coordinator

Each utility and right-of-way user shall name a utility coordinator who shall be the representative and point of contact for all communications from the City and who shall meet with the right-of-way manager when so requested.

Sec. 14.10.12 Field utility coordination

(a) The right-of-way user shall notify the Department at each of the following times during a project:

- (1) Forty-eight hours before the start of construction;
- (2) Upon completion of the initial backfill; and
- (3) Upon completion of the project.

The right-of-way user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act and execute an excavation permit with the City.

(b) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of “nonwashable” markers is prohibited.

(c) Compliance with the Texas Utilities Code, as amended, is required at all times.

(d) All barricades, plates, cones, traffic directional equipment and all other traffic control devices owned, leased or used by the right-of-way user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or right-of-way user or subcontractor, as applicable, at all times such equipment is used on or near the right-of-way. An exception to the marking requirement may be made in the sole discretion of the right-of-way manager in the event the traffic control equipment is not owned by the permittee or right-of-way user.

Sec. 14.07.13 Maps and records of registrants

(a) Within 60 days of passage of this article, each right-of-way user shall provide the City an accurate map of their service area within City corporate limits. The map shall be in electronic format overlaid over the Denton County and North Central Texas Council of Governments digital map, as applicable. In dual coverage areas, the City may request additional information to enable identification of right-of-way users.

(b) Each right-of-way user must maintain accurate maps and records of its facilities. If available, the City’s road network may be provided in digital format upon request. The right-of-way user shall maintain their system maps geo-referenced to the City’s geodetic network, which is on the Denton County digital map or the North Central Texas Council of Governments digital map, as applicable. The map shall include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The right-of-way user will provide the City with digital information within 90 days of a request for maps from the City for any user with less than 50 miles of utilities within the City. All other right-of-way users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the City on an annual basis by January 1.

(c) If the maps and records submitted in response to any request by or requirement of the City include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the City and its agents, employees, or other representatives may not disclose that information to the public without the consent of the right-of-way user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a right-of-way user to designate all matters in its maps and records as confidential or as trade secrets.

Sec. 14.07.14 Notice

Notice for purposes of this article shall be made to the City via electronic message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the Department, or United States mail return receipt required.

Sec. 14.07.15 Registration

(a) Nothing in this section relieves a right-of-way user and/or utility from obtaining a permit under this article to perform work in the right-of-way.

(b) In order to protect the public health, safety, and welfare, a utility maintaining or operating existing facilities in the right-of-way must register with the right-of-way manager in accordance with the following requirements:

(1) The registration must be on a form furnished by the right-of-way manager and made in the name of the right-of-way user that owns the facilities.

(2) Registration expires December 31 of the following fifth year after the first registration occurs. If the utility fails to renew registration by that date, the City will send by certified mail a notice of noncompliance to the address listed on the registration. For utilities with a current franchise or license to use the right-of-way for its facilities, the franchise or license will be evidence of renewal. If the utility fails to renew registration within 60 calendar days after the date of sending the notification, the facilities of the utility will be deemed to have been legally abandoned.

(3) If information provided as part of the registration changes, the utility must inform the right-of-way manager, in writing, not more than 30 days after the date the change occurs.

(4) The utility shall also include the following registration:

a. The name of the utility using the right-of-way, including any business name, assumed name, or trade name the utility operates under or has operated under in the City within the past five years.

b. If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.

c. The ordinance number of any franchise or license issued by the City that authorizes the utility to use the right-of-way.

d. The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.

e. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility.

f. The name, address and telephone number of any contractor or subcontractor, who will be working in the right-of-way on behalf of the utility. This list may be amended as needed by the utility; however, no work shall be performed in the right-of-way by a contractor or

subcontractor that is not on the list, regardless of whether a permit is required.

g. The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the City having to pay long distance telephone or toll charge.

h. Proof of existing insurance that complies with Section 14.07.102.

(c) Upon completion of registration, the City will provide the right-of-way user a registration certificate valid until the end of the fifth calendar year during which the registration was completed. The right-of-way user may make as many photocopies of the registration certificate as necessary. The right-of-way user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(f) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

(d) Right-of-way users with facilities located in the right-of-way on September 1, 2017, shall be required to register pursuant to this section not later than December 31, 2017.

Sec. 14.07.16 Traffic handling training

The right-of-way user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic control representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The traffic control representative shall ensure employees on the job site have adequate training.

Sec. 14.07.17 Reporting obligations

All right-of-way users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the City, state, or federal government, or railroad or pipeline company, including a description of the right-of-way user's intended use of the right-of-way, information sufficient to determine whether the right-of-way user is subject to franchising or licensing by the City, and information to determine whether the right-of-way user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the right-of-way user has applied for and received any permit or other approvals required by the FCC. Right-of-way user shall provide all such other information as may be reasonably required by the City to complete the registration statement.

Sec. 14.07.18 Surface mounted markers

Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible.

Sec. 14.07.19 Relocation of facilities for city projects and public improvements

(a) In the exercise of governmental functions, the City has first priority over all uses of the right-of-way. The City reserves the right to, among other things, lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in street facilities in across, along, over, or under a public street, alley or right-of-way occupied by an agency or right-of-way user, and to change the curb, sidewalks, or the grade of streets.

(b) The right-of-way user must relocate its facilities, at its own expense and in accordance with Section 14.07.65, prior to the start of construction of a City project. Failure to comply with this provision shall subject the right-of-way user to the enforcement provisions contained herein.

(c) A permit will be required when making facility adjustments in preparation for City projects.

Sec. 14.07.20 Permit required

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a thoroughfare without first having made application and obtained a permit therefore in compliance with the Public Right-of-Way Permitting, NCTCOG, TCSS and/or Node Design Manuals, promulgated and amended by the right-of-way manager and adopted from time to time by resolution of the City Council, except as allowed by this section. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any right-of-way for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the right-of-way manager a permit in compliance with this article.

(1) Before issuing a permit, the right-of-way manager shall have been provided a written application, on a form furnished by the right-of-way manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with City specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If right-of-way user cannot show distinctive line weights, the plans shall clearly label the above information using text. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.

(2) At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in the master fee schedule of the City.

(3) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the right-of-way manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.

(4) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with facilities installed in any right-of-way to relocate the facilities, at no cost to the City, subject to state law, if applicable, in the event that relocation is required by the City to accommodate a proper governmental use of the right-of-way.

(5) Combinations of permits shall be permitted at the sole discretion of the right-of-way manager. Fees shall be assessed based on the excavations permitted.

(6) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this article.

Sec. 14.07.21 Exceptions to required permit

(a) The right-of-way manager reserves the right in his discretion to require a right-of-way permit on service connections. Unless otherwise required by the right-of-way manager, service connections do not require a permit if all of the following conditions are satisfied:

(1) The service connection excavation does not encroach inside the right-of-way;

(2) All excavation is in accordance with service connection drawings;

(3) The address for the service connection is on the City-provided form, which is submitted to the right-of-way manager via e-mail. Work shall not begin until the electronic form is transmitted to the right-of-way manager;

(4) The excavation required is less than 12 inches in depth; and

(5) The service connection does not require boring.

(b) Irrigation system installation requires a permit per existing City codes.

(c) Installation of Network Nodes and related equipment shall not require a permit pursuant to this article provided such equipment is installed pursuant to Chapter 284 of the Local Government Code and Division 7 of this article.

Sec. 14.07.22 Permit application

(a) Each application for a permit shall be addressed to the right-of-way manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or excavation to be made, the location, by street and number if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavating, which will exceed five feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.

(b) A permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new right-of-way permit.

(c) Fees shall apply to all right-of-way users unless governed by an existing agreement with the City. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The City will recognize only one point of contact.

(d) Permits will be issued or denied within ten (10) days of the City receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The City may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date. Applicants are encouraged to request a pre-submission meeting for large projects.

(e) An expedited permit may be requested, and shall be issued or denied within five (5) days of application upon a showing of good cause, as solely determined by the right-of-way manager, and the payment of any applicable fee established for expedited consideration.

Sec. 14.07.23 Issuance of permit

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the right-of-way manager, it shall be his duty to issue the permit if and when the application complies with the provisions of this article.

(1) Upon receiving a written application for a permit and a plan prepared in accordance with the City specifications, the right-of-way manager's designee shall set forth all requirements, approve or disapprove the application, sign and

return it to applicant. Excepting only emergency excavations, at least forty-eight (48) hours prior to the start of work, the applicant shall notify the right-of-way manager the date the work will commence when traffic control devices are necessary on a thoroughfare.

(2) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.

(3) Each permit shall state a time period for completion of all the work to be done hereunder. The right-of-way manager may in his sole discretion, grant extensions of time.

(4) No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation is/are corrected or a plan for correction is approved by the right-of-way manager. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.

(5) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the right-of-way user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

Sec. 14.07.24 Posting of signs

The right-of-way manager may direct that the right-of-way user and contractor (if used) shall be identified by three feet by three feet information signs on all work requiring a permit. The signs shall state the name and phone number of the right-of-way user and contractor (if used). The signs shall be placed in the right-of-way on each approach to the location where construction is occurring from the time of the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring.

Sec. 14.07.25 Excavation to be under supervision of the right-of-way manager

(a) Any right-of-way user engaged in making or backfilling any excavation in any right-of-way shall, at all times while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide of the same, when requested by any authorized City employee. At all times while the work is in progress, the right-of-way user shall also maintain, at the job location, a sign, barricade or other device bearing the right-of-way user's name.

(b) The right-of-way user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, street lights, or other property at, near or encountered in its work. The right-of-way user shall determine the boundary of the right-of-way.

(c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of right-of-way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City pursuant to the policy and regulatory powers of the City necessary to provide for public convenience. The right-of-way user shall not trespass upon private property. The right-of-way user shall determine the boundary between right-of-way and private property and place stakes/markers indicating the boundary to remain in place for the duration of the work.

(d) The City reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the City Council, in, across, along, over or under any right-of-way or public place occupied by a right-of-way user and to change any curb or sidewalk or the grade of any street and to maintain all of the City's facilities. In allowing such work to be performed by others, the City shall not be liable to a right-of-way user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a right-of-way user by such third party.

(e) All transmission and distribution structures, lines, equipment and facilities erected by a right-of-way user within the City shall be so located as to cause minimum interference with the proper use of the right-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the right-of-way.

(f) If the City requires a right-of-way user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the City, to use, or to use with greater convenience, any right-of-way or public place, the right-of-way user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a right-of-way user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a right-of-way user's facilities; provided, however, that the City shall never be liable for such reimbursement.

Sec. 14.07.26 Registration certificate required

It is unlawful for any person, its agents, servants or employees to perform construction in the right-of-way without first having made either application and obtained a permit therefore or have in possession a valid registration certificate. A registration certificate may only be used for construction activities not requiring a permit in accordance with this article. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided the activity complies with Section **14.07.25**.

Sec. 14.07.27 Hours of operation for nonemergency work

(a) Excavation and boring shall be conducted between 7:00 a.m. and thirty (30) minutes before sundown on Monday through Friday, except on holidays. No excavation or boring shall be performed on holidays.

(b) All other work requiring an inspection shall be done between 7:00 a.m. and thirty (30) minutes before sundown on Monday through Friday, except on holidays. No work shall be performed on holidays. A right-of-way user may work on Saturday subject to the approval of the right-of-way manager and a notification no later than noon on Thursday before the Saturday in which the work is to be performed. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed.

(c) Notwithstanding paragraphs (a) and (b) of this section:

(1) No excavation and boring shall occur between the hours of 7:00 a.m. to 9:00 a.m. and between 4:00 p.m. to 6:00 p.m. on any major arterial street or thoroughfare unless authorized by the City Manager; and

(2) No excavations shall be allowed within fifty (50) feet of a City-owned utility line between the hours of 5:00 p.m. and 7:00 a.m., Monday through Thursday, and 12:00 noon on Friday to 7:00 a.m. Monday.

Sec. 14.07.28 Denial of permit

A permit may be denied or suspended for any of the following reasons:

(1) Failure to provide proof of a surety bond or liability insurance acceptable to the City or notice of termination of the same.

(2) Failure to secure a contractor's license or other required license.

(3) Failure to perform in accordance with the requirements of this article.

(4) The excavation would be in a street and not otherwise permitted by this article.

(5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the right-of-way manager.

(6) The proposed activity would violate any City ordinance or state or federal law, rule, regulation or statute.

(7) The permit application contains false or misleading information.

(8) The activity would cause a public health or safety hazard.

(9) The right-of-way user is not authorized within the City.

(10) The right-of-way user is in violation of this article relative to work in progress.

(11) The right-of-way user has not compensated the City, unless the user is not legally obligated to compensate the City by contract, by agreement or by law, for using the public property; or the right-of-way user has failed to timely make required payments.

Sec. 14.07.29 Appeal

A right-of-way user that: (i) has been denied registration; (ii) has been denied a permit; (iii) has had a permit revoked; or (iv) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

(1) If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the right-of-way manager within five business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The right-of-way manager shall provide a written decision within five business days. Failure to render a decision within five business days shall constitute a denial.

(2) If a further denial is given, the appellant may thereafter file a written notice of appeal to the City Manager within five business days of receipt of the right-of-way manager's written decision. The City Manager shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial.

DIVISION 3 TECHNICAL SPECIFICATIONS

Sec. 14.07.51 Lawful use of right-of-way

(a) The use of the right-of-way in any manner which violates federal, state, or local laws, or City codes, ordinances and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the City.

(b) The permittee shall dispose of all material removed from the right-of-way and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches.

(c) If a permittee excavates any contaminated, regulated or hazardous materials in the right-of-way, such permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the City, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the right-of-way, and within eight hours provide the aforementioned information to the City in

writing. The permittee must consult with and receive written authorization from the City before undertaking any of the steps/actions set forth in this subsection.

Sec. 14.07.52 Compliance with safety regulations

The permittee and right-of-way user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

Sec. 14.07.53 Conformance with the thoroughfare plan

A right-of-way user should consult the City's thoroughfare plan prior to the acquisition of any interest in real property in the City for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, right-of-way, thoroughfare, highway, or any proposed street, right-of-way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All right-of-way users are charged at all times with constructive notice of the thoroughfare plan. The City shall, at a minimum, have no liability for the value of or loss by a right-of-way user of any improvements constructed in the area shown on the thoroughfare plan, except as provided herein. Typical locations of City facilities are depicted in in the City standard details.

Sec. 14.07.54 Tree trimming and graffiti abatement

Permission is granted to a right-of-way user, subject to the requirements of this article, as it exists or may be amended from time to time, to trim trees upon and overhanging the right-of-way on property other than property owned by the City, so as to prevent the branches of such trees from coming in contact with a right-of-way user's facilities. When so directed by the City, the tree trimming shall be done under the supervision and direction of the City. The right-of-way user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed seven days after the right-of-way user discovers or learns of any misuse, destruction, damage or vandalism to its facilities.

Sec. 14.07.55 Employee communication

The right-of-way user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently.

Sec. 14.07.56 Routing and spatial assignment

The City reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the right-of-way. The City reserves the right to reserve space for future utilities.

Sec. 14.07.57 Commencement and completion

After obtaining the permit and prior to commencing the work, the permittee shall notify the right-of-way manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the right-of-way manager. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.

Sec. 14.07.58 Notification of affected property owners

Except in the case of an emergency, whenever excavation is required in the right-of-way adjacent to an occupied property, the right-of-way user shall notify the property owner of the activity through use of a door hanger, which shall include the following information:

- (1) Permit number;
- (2) Identify of the contractor and the right-of-way user, including a contact name and phone number by which more information regarding the project could be obtained and a 24-hour a day emergency phone number; and
- (3) The anticipated duration of the construction work.

Sec. 14.07.59 Safe conduct of work

Every permittee and right-of-way user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or right-of-way where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation, in accordance with TMUTCD. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and nonhazardous manner.

Sec. 14.07.60 Revocation or suspension of permit

The City reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other City ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (1) The violation of any provision of the permit.
- (2) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens.
- (3) Any material misrepresentation of any fact in the permit application.
- (4) The failure to meet insurance, surety bond or indemnification requirements.
- (5) The failure to complete the work as specified in the permit.

- (6) The failure to correct a condition indicated on an order issued pursuant to this article.
- (7) Repeated traffic control violation(s).
- (8) Failure to protect facilities or repair facilities damaged in the right-of-way.
- (9) Violation of any part of this article.
- (10) Recognition by the right-of-way manager that a permit was issued in error.
- (11) Failing to comply with an order of the right-of-way manager on the permit and any other valid permit held by the right-of-way user.
- (12) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the right-of-way manager.

If the right-of-way manager determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the right-of-way manager shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The right-of-way manager may, in his discretion, revoke the permit, provide specifications to cure the breach, or both. Within two business days of receiving notification of the breach, permittee shall contact the right-of-way manager with a plan, acceptable to the right-of-way manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

Sec. 14.07.61 Work not in accordance with permit declared unlawful

(a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, right-of-way or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the right-of-way manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the right-of-way manager may, in his sole discretion, grant a waiver to take the circumstances into account.

(b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the right-of-way manager has approved alternative requirements.

Sec. 14.07.62 Work done without a permit

No cut, excavation, grading or disturbing of the right-of-way or wires on poles, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. No person or right-of-way user shall, at any time, open or encumber

more of the right-of-way than shall be reasonably necessary to complete a project in the most expeditious manner.

Sec. 14.07.63 Cessation of work

At any time, the right-of-way manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The right-of-way manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or wellbeing of the public.

Sec. 14.07.64 Violations of standards; notice

The right-of-way manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within five days after issuance of written notice, the permittee shall present proof to the right-of-way manager that the violation has been corrected. If such proof has not been presented within the required time, the right-of-way manager may revoke the permit.

Sec. 14.07.65 Location and relocation of facilities

Subject to applicable federal, state, and local laws, the right-of-way user shall, upon the request of the City, which shall be in writing, locate and/or relocate its facilities situated within any right-of-way, at no expense to the City, where reasonable and necessary to accommodate any City project. The written request provided by the City shall state the date by which the relocation by the right-of-way user shall be completed and a reasonable amount of time shall be provided by the City. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the City will reimburse applicant for its proportionate share from funds provided to the City in such reimbursements.

Sec. 14.07.66 Relocation facilities for the city

In the event the City finds it necessary to move a right-of-way user's facilities to protect the right-of-way, any City utilities and/or street, the City shall notify the local representative of the right-of-way user. Right-of-way user shall promptly move or facilitate the relocation of the subject facilities at right-of-way user's sole expense.

Sec. 14.07.67 Abandoned facilities

(a) A right-of-way user owning abandoned facilities in the right-of-way shall:

- (1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The right-of-way manager may allow some or all facilities to remain if the right-of-way manager determines same is in the best interest of the public to do so; or

(2) Provide information satisfactory to the City that the right-of-way user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized right-of-way user.

(b) The facilities of the right-of-way user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the City receives written confirmation and reasonable evidence, as solely determined by City, that the right-of-way user intends to use the facilities. The City may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the right-of-way user at the right-of-way user's sole expense.

Sec. 14.07.68 Underground service requirements

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by other law or an existing franchise agreement between the right-of-way user and the City or a PUCT tariff. This does not prohibit replacing existing poles for maintenance purposes. Utilities shall be located underground to the extent required by Section 3.8 of the Highland Village Subdivision Ordinance, as amended.

Sec. 14.07.69 Location of poles and conduits

All poles in the right-of-way shall be of sound material, and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to interfere with vehicular and pedestrian travel. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a right-of-way user in the construction and maintenance of its system in the City shall be subject to the reasonable and proper control, direction and approval of the City. Placement of poles and anchor guys along curvilinear streets shall comply with City ordinances and regulations. Poles located in the right-of-way in a subdivision where non-standard decorative poles are installed or otherwise required shall be of the same material and design of such decorative poles.

Sec. 14.07.70 Size and location of aboveground facilities

The maximum dimensions for ground mounted utility structures above the ground in the right-of-way adjacent to streets are seven feet long (parallel to the road), two feet wide (perpendicular to the road) and six feet in height. For structures three feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the right-of-way adjacent to streets, unless otherwise approved in writing by the right-of-way manager. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening. Ground mounted utility structures exceeding the dimensions in this section already installed on September 1,

2017, may remain, and replaced only with ground mounted utility structures with dimensions no larger than such existing structures.

Sec. 14.07.71 Height of overhead line

When overhead power lines are otherwise allowed, the user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code as it exists or may be amended.

Sec. 14.07.72 Attachments to poles

(a) Nothing shall obligate or restrict a right-of-way user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the City.

(b) A right-of-way user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.

(c) Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation.

(d) Equipment, other than antennas, must be in an underground vault. Vaults must be flush to the ground.

(e) If the existing pole already has more than two existing risers/drops, the pole must be replaced with a metal, concrete, synthetic or approved equal pole and all wires and cables must be run in conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color.

Sec. 14.07.73 Temporary rearrangement of aerial wires

The right-of-way user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The right-of-way user shall in a reasonable time frame and reasonable cost remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the City. The right-of-way user may invoice the requesting parties for the cost of this work, where applicable.

Sec. 14.07.74 Street closures

(a) All lane closures on any thoroughfare shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the right-of-way manager. The right-of-way manager may require a traffic control plan. Arrow boards and message boards may be required for lane closures on thoroughfares.

(b) Except in an emergency, no thoroughfare will be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. or outside normal working hours of the City. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.

(c) All lane closures require 24-hour notification of the police and fire departments prior to closing

Sec. 14.07.75 Site maintenance during construction and prior to full restoration

(a) Erosion control and stormwater management. The right-of-way user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with City, state and federal laws, regulations, and ordinances. Requirements shall include, but not limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request of right-of-way manager, the right-of-way user may be required to furnish documentation submitted or received from the federal or state government.

(b) Dust control. The right-of-way user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.

(c) Traffic control safety. In the event of noncompliance with the TMUTCD, the right-of-way user shall be notified of the violation. In the event of continued noncompliance, the right-of-way manager may revoke the permit, in addition to any other remedies available to the City. At any time the right-of-way manager determines the work threatens public safety, he may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.

(d) Responsibility for signs, barricades and warning devices. The right-of-way user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The right-of-way user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.

(1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.

(2) The right-of-way user must either: (i) subcontract the barricading to a firm specializing in traffic control; or (ii) submit the qualifications and name of employees to the right-of-way user manager for approval prior to the work commencing. The right-of-way user must also submit a traffic control plan for review when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.

(3) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic control representative.

(4) All barricades, plates and other traffic control equipment must display accurate and sufficient information including without limitation, the name of the right-of-way user.

(5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the right-of-way manager may place the necessary devices as required, and the right-of-way user shall reimburse the City for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.

(6) All traffic control devices must be removed immediately upon completion of work.

(e) Duty to barricade. At all times during construction activity, the contractor and/or right-of-way user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

Sec. 14.07.76 Inspection

The permittee shall make the work site accessible to the City, and others as authorized by law, for inspection at all reasonable times during performance of the work.

Sec. 14.07.77 Materials testing

The City will require testing of materials used in construction in or near the right-of-way to determine conformance with City construction specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the City. The right-of-way user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

Sec. 14.07.78 Duties of persons making excavations or creating obstructions

Any person who shall cause to be made any excavation or obstruction in any street or right-of-way shall not allow the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or right-of-way so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of

such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or right-of-way in as good condition as before the excavation.

Sec. 14.07.79 Emergency excavations

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or right-of-way by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the right-of-way manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

Sec. 14.07.80 Excavation in streets

Except in case of an emergency there shall be no excavation in any street without the prior written approval of the right-of-way manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the right-of-way manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the right-of-way manager.

- (1) Excavation in Portland cement concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a depth of the full the thickness of the concrete or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in the City's standard details.
- (2) Excavation in hot mix asphalt concrete (HMAC) pavement surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the pavement or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the pavement and excavated to undisturbed soil. Further criteria is set forth in the City's standard details.
- (3) Jacking and boring. A permittee or right-of-way user shall perform all work in conformance with methods approved by the City and in such a manner as to not interfere or disturb existing or planned infrastructure.
- (4) Responsibility of excavated area maintenance. A permittee or right-of-way user shall warrant and be responsible for its repairs in the right-of-way for two years from the completion date of any repair.

Sec. 14.07.81 Backfill of excavated area

(a) Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. Traffic bearing plates can be used temporarily in conformance with City requirements. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the right-of-way manager of the time the backfill will begin.

(b) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. Compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by right-of-way manager. Outside of pavement surfaces, compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698, and be smoothed, raked, and topsoil and grass or other landscaping installed to match the surrounding conditions.

Sec. 14.07.82 Right-of-way restoration requirements

(a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the right-of-way must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the right-of-way manager may, in his sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.

(b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the City, and damaged, disturbed, or removed by a right-of-way user shall be fully repaired promptly by the right-of-way user, at its sole expense, to the reasonable satisfaction of the right-of-way manager with material approved by the City.

(c) After any excavation, the right-of-way user shall, at its expense, restore the right-of-way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall be covered by a maintenance bond for two years from the completion date of any repair.

(d) In the event the right-of-way user fails to restore the right-of-way in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the City may, at its option, serve written notice upon the right-of-way user that, unless within five days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way by the right-of-way user, the City may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the right-of-way user, and right-of-way user, and its surety, shall be liable to the City for any and all cost incurred by the City by reason of such prosecution an completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the City.

(e) If any excavation cannot be backfilled immediately, the right-of-way user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(f) In all right-of-way restoration, the right-of-way user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the right-of-way user shall, in the event of any failure of the restoration, and upon notification from the right-of-way manager, reimburse the City for pavement restoration costs as provided for in this article. Additionally, the right-of-way user, in the event of such failure, shall within 48 hours of notice from the City, repair the subject trench envelope.

(g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the City, the right-of-way user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more right-of-way users have made repairs in the exact same location, the last right-of-way user to excavate shall be responsible for the two-year guarantee in that location, unless the right-of-way manager determines, in his sole discretion, that a failure was most likely a result of work performed by another right-of-way user. That right-of-way user shall be responsible for the two-year maintenance period.

(h) All street excavations shall be perpendicular excavations, as possible, unless otherwise approved by the right-of-way manager. Excavations in streets, which are not perpendicular excavations require block-to-block and curb-to-curb pavement reconstruction, or other method of repair approved by the right-of-way manager. All repairs shall be equal or better than that which existed prior to the commencement of any work.

(i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same workday before sunset. Any variance from this requirement must be granted in writing from the right-of-way manager prior to work beginning.

Sec. 14.07.83 Restoration of pavement

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, right-of-way or other public place shall be performed by the permittee.

(1) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the right-of-way manager.

(2) All excavations shall comply with the City construction standards, as amended, and requirements of this article. Unless otherwise required by City standards, as amended, or if unusual conditions are encountered, the right-of-way manager may require new standards for compaction, backfill and pavement restoration.

(3) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the right-of-way user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the right-of-way manager.

(4) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

Sec. 14.07.84 Permanent pavement repairs

The right-of-way user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The right-of-way user shall make the final repairs within seven days on thoroughfares that are classified as major and within 30 days on residential, local and alley streets after the right-of-way manager makes final inspection. Backfill failures shall remain the responsibility of the right-of-way user.

Sec. 14.07.85 Substandard repair of pavement of right-of-way

In case the pavement or the surface of the street, alley, or right-of-way in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the right-of-way user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the City of the cost to restore the street and/or right-of-way.

Sec. 14.07.86 Failure to complete work within specified time

In the event any work governed by this article is not completed by the right-of-way user within the time required or in accordance with the specifications required herein or by the right-of-way manager, the right-of-way manager may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The right-of-way user shall reimburse the City for the costs of securing the site.

Sec. 14.07.87 Removal and reconstruction where work is defective

All construction work in the streets, rights-of-way, sidewalks and public places of the City is declared to be subject to the exclusive control of the City, and whenever, in the sole opinion of the right-of-way manager, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefore given to him by the right-of-way manager, then upon written demand or notice from the right-of-way manager, such right-of-way user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the right-of-way manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or right-of-way user shall fail or refuse to do so within a reasonable time to be specified by the right-of-way

manager, then, if required by the right-of-way manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the City, in such a manner as in the opinion of the right-of-way manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the right-of-way manager, and the contractor or right-of-way user shall reimburse City for any and all cost incurred by the City performing the work described in this subsection.

Sec. 14.07.88 Cleanup of right-of-way

In every case, and at all times, the work of removing from the right-of-way all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the right-of-way user. The right-of-way user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work. Streets shall be cleaned by use of a vacuum street sweeper. The right-of-way user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the right-of-way manager, sufficient reason therefore having been given to his satisfaction, grants a written extension of time.

Sec. 14.07.89 Reporting Completion of Work

When the work under permit hereunder is completed, the permittee shall notify the City in accordance with the requirements placed on the permit. The City will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.

Sec. 14.07.90 Effect of article on persons engaged in construction

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of City ordinances and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY

Sec. 14.07.101 Liability of right-of-way user

To the extent allowed by law, the right-of-way user shall be liable to the City for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the right-of-way user shall fully indemnify, hold harmless and defend the City, its Councilmembers, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the City, its Councilmembers, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The City shall promptly notify a permittee, or right-of-way user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the City and

alleging negligent or wrongful conduct by the permittee or right-of-way user in connection with an excavation.

Sec. 14.07.102 Insurance

- (a) It shall be unlawful for any person, unless exempt under this Chapter, to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the City without having first executed and delivered to the City a current policy of liability insurance in an amount not less than \$1,000,000 combined single limit per occurrence, and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the City harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work. Such policies shall be endorsed to name the City as an additional insured and to waive subrogation against the City. The City shall have no duty to perform under this article until such certificate has been delivered to the Department.
- (b) The City shall be entitled, upon request and without expense before issuing a permit, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the City, the right-of-way user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (c) Right-of-way user shall notify the City in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten days' notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance.
- (d) Nothing herein contained shall be construed as limiting in any way the extent to which the right-of-way user may be held responsible for payments of damages to persons (including death) or property resulting from the right-of-way user's, or its subcontractors', performance of the work performed in the public right-of-way.
- (e) The City owned utilities shall not be required to provide the insurance specified herein.
- (f) With respect to the right-of-way user's obligation to comply with the requirements for commercial general (public) liability insurance coverage, the City right-of-way manager may, in his discretion, allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to show the user has sufficient assets and history of performance to justify the user to self-insure.

Sec. 14.07.103 Performance/assurance bond

Before a permit shall be issued, the right-of-way manager may, in his discretion, require the applicant and/or the person or entity for which the applicant is performing, to execute and deliver to the City, to be kept on file with the City, a good and sufficient bond of performance or assurance, in the sum to be determined by the City and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the City, its Councilmembers, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the City.

Sec. 14.07.104 Liability of contractor and sureties for maintenance and repair work

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the right-of-way user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the City retains the right and option to terminate the right-of-way user's guaranty, upon written notice to the right-of-way user. In such event, the right-of-way user shall reimburse the City for its direct costs associated with the repair of the failure of the restoration work.

Sec. 14.07.105 When additional security required

In the event the right-of-way manager reasonably believes the contractor's or right-of-way user's solvency is threatened, the right-of-way manager may, at any time, make written demand on a contractor and/or right-of-way user for bonds, and the contractor and/or right-of-way user shall immediately furnish such additional bond or bonds to the City.

Sec. 14.07.106 Decision of right-of-way manager binding on contractor, right-of-way user and sureties

If any question arises as to when any work was actually begun or other specific dates, the decision of the right-of-way manager shall be conclusive on the contractor, right-of-way user, and the sureties on all such bonds.

DIVISION 5. VARIANCES AND EXEMPTIONS

Sec. 14.07.107 Variance/exemptions

A permittee or right-of-way user may request a variance from any of the requirements of this article by filing a written request with the right-of-way manager stating the requirement and the basis for the variance. The right-of-way manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

(1) Any request for a variance from any right-of-way restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.

(2) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefore.

(3) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.

(4) The Department shall grant or deny an application for a variance and/or exemption within ten days of receipt of the application for variance and/or exemption.

DIVISION 6. CERTIFIED TELECOMMUNICATION PROVIDERS

Sec. 14.07.126 Certificated telecommunications providers authority required/nonexclusive use

A CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use public right-of-way. The CTP's right to use and occupy the public right-of-way shall not be exclusive, and the City shall have the right to exercise its police powers and manage its public right-of-way, based on the Act and all other state or federal laws.

Sec. 14.07.127 Transfer and notice

A CTP shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the CTP uses the right-of-way.

Sec. 14.07.128 Exemption from fees

CTPs are exempted from the following fees provided for in this article:

(1) Permit application fee, including expedited application fee and permit expiration fee;

- (2) Additional permit fee;
- (3) Saturday inspection fee;
- (4) Registration fee.

Sec. 14.07.129 Waiver bonds

Unless determined otherwise by the right-of-way manager, a CTP will be exempt from the bonding requirements of this article, however, in the event that the right-of-way manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the right-of-way manager may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the right-of-way manager requires a bond of a CTP and it has not been necessary for the City to seek performance under the bond, then a bond will no longer be required pursuant to this section.

Sec. 14.07.130 CTP indemnity

A CTP shall indemnify the City as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A., Local Government Code sec. 283.057, as amended.

DIVISION 7. NETWORK PROVIDERS

Sec. 14.07.151 Network providers' authority required/nonexclusive use

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public right-of-way. The network provider's right to use and occupy the public right-of-way shall not be exclusive, and the City shall have the right to exercise its police powers and manage its public right-of-way, based on the Texas Local Gov't Code Chapter 284 and all other state or federal laws.

Sec. 14.07.152 Transfer and notice

A network provider shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the network uses the right-of-way.

Sec. 14.07.153 Fees

(a) Exemptions. Network Providers are exempted from the following fees provided for in this article:

- (1) Permit application fee, including expedited application fee and permit expiration fee;
- (2) Additional permit fee;
- (3) Registration fee.

(b) Network Provider Fees

(1) *Annual Network Node Rate.* Network Providers shall pay the City an annual Network Node Rate for each Location for which Network Provider has obtained Permit(s) for the installation of Network Nodes, regardless of whether or not a Network Provider installs Network Nodes in the Public Right-of-Way. The amount of the Annual Network Rate shall be set in City's Master Fee Schedule. The annual Network Node Public Right-of-Way Rate payment for the first year at any Location ("Initial Annual Network Node Payment") begins accruing when the permit is issued and is due 30 days after Network Provider obtains a Permit to install or collocate a Network Node at the Location. The Initial Annual Network Node Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date.

(2) *Subsequent Years' Annual Network Node Rate Due Date.* The annual Network Node Public Right-of-Way Rate for every year after the Initial Annual Network Node Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

(3) *Annual Network Node Rate Adjustment.* The City may adjust the annual Network Node Public Right-of-Way Rate by an amount equal to one-half the annual change in the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. The City shall provide written notice to each Network Provider of the new rate, and the rate shall apply to the first payment due to the City on or after the 60th day following that notice.

(4) *Annual Collocation on Service Pole Attachment fee.* Network Provider shall pay the City annually \$20 for each Network Node Permitted to be Collocated on a City Service Pole for each Location for which Network Provider has entered into an agreement with the City to collocate a Network Node on a City Service Pole, regardless of whether or not a Network Provider collocates a Network Node on a Service Pole. This fee is due 30 days after Network Provider obtains a Permit to install a Network Node on the City Service Pole. The Initial Annual Collocation on Service Pole Attachment Fee Payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date. The annual Collocation on Service Pole attachment fee for every year after the Initial Payment shall be paid in advance on or before December 31 of each calendar year for each Network Node in the Public Right-of-Way for the next calendar year period.

(5) *Monthly Transport Fee.* To the extent a Network Provider has Transport Facilities Permitted from the Network Nodes in the Public Right-of-Way it shall pay the City a monthly Transport Facilities fee on a quarterly basis, in the amount set in the City's Master Fee Schedule, as adopted and amended by resolution of the City Council, which begins accruing when the permit is issued. This Transport Facility fee is in addition to any annual Network Node Public Right-of-Way Rate payment required by Section 284.053, V.T.C.A. Local Government Code.

(6) *Application and Permit Fees.* Network provider shall pay the City the application and permit fees set forth in the City's Master Fee Schedule contemporaneously with the submittal of the application for the permits.

Sec. 14.07.154 Network Provider indemnity

A network provider shall indemnify the City as specified by V.T.C.A., Local Government Code, sec. 283.057, as may be amended.

Sec. 14.07.155 Compliance with Design Manual

A network provider shall comply with the City Design Manual for the Installation of Network Nodes and Node Support Poles, as adopted and amended by resolution of the City Council from time to time, the official copy of which shall be maintained in the office of the City Secretary. Any applications submitted for installation of Network Nodes, Node Support Poles and related equipment, the plans and specifications of which do not comply with the Design Manual, will not be approved.

Sec. 14.07.156. - Certificates of Operation

As part of the application process for the installation of network nodes, the Network Provider must certify that the proposed network node will be placed into active commercial service by or for a network provider no later than the 60th day after the date the construction and final testing of the network node is completed. An updated certification of active service must be submitted annually, by no later than December 31st, with or prior to payment of the applicable annual fee(s). If the Network Provider is not in active commercial service for a period in excess of sixty (60) consecutive days, the equipment will be deemed abandoned and the permit will be revoked. The network provider will be required, within ninety (90) days from notification from the City, to remove the equipment at the network provider's sole expense.

DIVISION 8. MISCELLANEOUS

Sec. 14.07.176 Penalty provision

Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law."

SECTION 2. All provisions of the Ordinances of the City of Highland Village, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect. Divisions 3 and 4 of Article 14.02 of the Code of Ordinances are expressly repealed.

SECTION 3. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinance as a whole.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense as set forth in Section 1.01.009 of the Code of Ordinances.

SECTION 6. This ordinance shall take effect on the first day of the calendar month following its passage on second reading and publication in accordance with the provisions of the state law and the Charter of the City of Highland Village.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON FIRST READING ON THIS THE 8TH DAY OF AUGUST, 2017.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, ON SECOND READING ON THIS THE 22ND DAY OF AUGUST, 2017.

APPROVED:

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, City Attorney

(kbl:8/7/17:88661)

CITY OF HIGHLAND VILLAGE
CITY COUNCIL BRIEFING

AGENDA# 14

MEETING DATE: 08/22/17

SUBJECT: Consider Resolution 2017-2695 Awarding the Bid and Authorizing a Contract for Pilot Knoll Park Restroom Renovation with K. Tillman Construction, L.L.C.

PREPARED BY: Linda Cornelius, Director of Parks and Recreation

BACKGROUND:

The City hired BR Architects, Inc. to inspect the facilities at Pilot Knoll Park. On Thursday, May 7, 2015, a visual review of the buildings in Pilot Knoll Park was carried out to determine compliance of the buildings with current TDLR ADA/Texas Accessibility Standards (TAS) and proper building construction condition with common architectural and engineering standards.

A formal report was received on August 13, 2015. The report noted that the condition of the buildings was typical of this type of facility and showed aspects of continual use, inadequate construction, failure to meet TDLR ADA/Texas Accessibility Standards, etc.

During the FY 16-17 budget process, the Pilot Knoll Park restrooms were identified as facilities that were in need of being renovated due to their existing conditions and the need to bring them into compliance with TDLR ADA/Texas Accessibility Standards.

The City began advertising the restroom renovation project with bid closing held on August 1, 2017. There was a mandatory pre-bid meeting held on July 19, 2017, which was attended by three companies.

PROGRESS TO DATE: (if appropriate)

The Pilot Knoll Park Restroom Renovation Project advertisement for bid was released Sunday, July 9, 2017. Bid closing was on August 1, 2017, 2:00 p.m. The following two bids were received.

Company	Base Bid Overnight Restroom	Alternate 1 Day Use Restroom	Alternate 2 Place rebar in CMU & fully grout cells	Total Of All Bids
K. Tillman Const. LLC	\$ 175,000.00	\$ 120,000.00	\$ 9,800.00	\$ 304,800.00
Cotton Commercial	\$ 153,816.66	\$ 125,250.00	\$ 40,833.00	\$ 319,899.66

At this time staff recommends completing the renovation of the overnight restroom to include Alternate No. 2. Funds have been requested in the FY 17-18 budget to purchase a pre-constructed restroom structure similar to the one purchased, and currently installed, at Lakeside Community Park.

BUDGETARY IMPACT/ORDINANCE CHANGE: (if appropriate)

Funds for this project will come from the CORPS Parks budget.

RECOMMENDATION:

Approve Resolution 2017-2695, authorizing the City Manager to award the bid for Pilot Knoll Park Restroom Renovation to K. Tillman Construction, L.L.C. in the amount of \$184,800.

CITY OF HIGHLAND VILLAGE, TEXAS

RESOLUTION NO. 2017-2695

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, AWARDED A BID AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND SIGN A CONTRACT FOR THE CONSTRUCTION TO RENOVATE PILOT KNOLL PARK RESTROOM TO K. TILLMAN, L.L.C. IN THE AMOUNT OF \$184,800; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, having solicited and received bids for construction of the Pilot Knoll Park Restroom Renovation ("the Project"), City Administration has determined that K. Tillman, L.L.C., from Dallas, Texas, has provided the lowest responsive bid and recommends awarding the bid to and entering into a contract for the base bid and Add Alternate No. 2 with K. Tillman Construction L.L.C. in the amount of \$184,800; and

WHEREAS, the City Council of the City of Highland Village finds it to be in public interest to concur in the above recommendation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to negotiate and sign on behalf of the City a contract with K. Tillman Construction, L.L.C. for construction of Pilot Knoll Park Restroom Renovation, inclusive of the Base Bid and Add Alternate No. 2, in the amount of \$184,000, and is further authorized to execute such change orders to said contract as he deems reasonable and necessary to the extent allowed by law and city policy and subject to the availability of current funds for said purpose.

SECTION 2. This Resolution shall be effective immediately upon approval.

PASSED AND APPROVED this the 22nd day of August, 2017.

APPROVED:

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, City Attorney
(kbl:8/16/17:89182)

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 16

MEETING DATE: 08/22/17

SUBJECT: Presentation of City Manager Recommended Budget for Fiscal Year 2017-2018

PREPARED BY: Ken Heerman, Assistant City Manager

BACKGROUND:

City Staff has presented the components of the FY 2018 Budget in various work sessions initiating with a preliminary look at capital projects at the Council planning session on March 11th. The Capital Improvement Program was presented on June 22nd, and the General Fund and Special Revenue Funds were discussed at the two meetings in July (July 11th and 25th). Finally, the Utility Fund was reviewed at the August 8th Council Meeting. Concurrent with the first of two public hearings, the City Manager Recommended Budget is presented to Council inclusive of feedback provided with the various budget discussions.

IDENTIFIED NEED/S:

The proposed budget can be viewed on the City website at:
<http://tx-highlandvillage.civicplus.com/DocumentCenter/View/4304>

RECOMMENDATION:

Council to receive presentation from the City Manager.



CITY MANAGER
1000 Highland Village Road
Highland Village, TX 75077
972-899-5131 F 972-317-0237
www.highlandvillage.org

August 22, 2017

Honorable Mayor Charlotte Wilcox and
Members of City Council
City of Highland Village

Dear Mayor and Members of City Council:

It is my pleasure to submit the City of Highland Village Fiscal Year 2017 – 2018 Budget and Program of Services to the City Council and citizens of Highland Village. The annual budget guides the City's plan for providing the services, facilities, and infrastructure that has made Highland Village one of the "Best Places to Live" by *D Magazine*.

This year's budget combines the efforts and input from citizens, City Council, and City Staff to develop a positive and progressive approach to plan for the future. A major component in achieving success is the development of Goals and Objectives by the Council, and the continued focus on them. By keeping the Goals and Objectives in clear view, Council and staff are able to position the community in a positive direction and effectively provide necessary services for Highland Village.

In accordance with the Texas Local Government Code and the Charter of the City of Highland Village, the proposed Annual Budget for the Fiscal Year beginning October 1, 2017, and ending September 30, 2018, is constructed for your review and comment and filed with the City Secretary. It presents, in summary form, the revenues and expenditures for each of the City's Departments, as well as the five-year Capital Improvement Program (CIP).

To communicate and facilitate the City's Budget and Program of Services, this transmittal letter is divided into the following sections:

- I. Overview**
- II. Goals, Objectives, and Departmental Tasks**
- III. General Fund Budget Highlights**
- IV. Financial Assessment**
- V. Conclusion**

I. OVERVIEW

While there is limited population growth within the City of Highland Village, our assessed valuations for 2017 from Denton Central Appraisal District (DCAD) has come in stronger than our past forecasts have shown. With this information and estimates for the upcoming budget year, we feel very positive in the ability to address a potential decrease in our municipal tax rate. Highlighted in this document are the Goals and Objectives of the City Council, direction for growth, operational excellence, a financially sound government, enhanced quality of life, as well as a safe and secure community.

Mayor Wilcox captures the essence of our role in preparing the budget each year:

“As Mayor of Highland Village, working with City Council and staff, as each decision comes before us I always frame my questions with ‘how will our residents benefit from this?’ It is our goal to be responsible with your money, transparent in how your money is spent, and conscientious of ensuring you, the taxpayer, receive the best service and amenities your money can buy.”

II. GOALS, OBJECTIVES, AND DEPARTMENTAL TASKS

The Council developed Goals and Objectives to direct Highland Village in meeting challenges and opportunities for future growth. The Goals and Objectives are relevant to successful programs and are further outlined in the *Strategic Goals and Long-Term Financial Plan* section.

Council also provided guidance in the Fiscal Year 2017 – 2018 Budget Development Considerations, which are as follows:

- **Tax Rate Management:** For the Fiscal Year 2017 – 2018 Budget, our certified tax roll indicates the ability for a potential tax rate decrease. The tax rate is currently allocated between Maintenance & Operations and Debt Service. We will continue to ensure that all Enterprise Funds, such as the Utility Fund, are covering indirect costs, as well as direct services. The tax rate of \$0.56963 has been maintained since 2000, the approved tax rate for Fiscal Year 2018 is \$0.56802.
- **Assessed Valuation:** Denton Central Appraisal District is projecting growth in our assessed values with the final certified tax roll that was submitted on July 25. For Fiscal Year 2018, assessed valuations reflect an increase of 6% over the previous year.
- **Over 65 Exemption:** We are proposing to increase the exemption amount from \$50,000 to \$75,000 for residents age 65 and over and/or disabled. This represents 22% of residents on the certified tax roll.
- **Fund Balances:** The Fiscal Year 2017 – 2018 General Fund Budget will maintain an estimated Fund Balance of approximately 26% for the preliminary five-year outlook.
- **Five-Year Forecast:** A focus on the five-year General Fund forecast and CIP shall provide guidance for development initiatives in future years.
- **Budget Process:** Departmental budgets are prepared using the thorough review of a budget software program, which facilitates justification for base budget items and supplemental requests.
- **Salary and Benefits:** Our proposed competitive pay, benefits, and career development structure to attract and retain qualified personnel for Fiscal Year 2017 – 2018 has identified a 4% increase for all employees (excluding Public Safety), which will be structured as a merit pool and wage adjustment. Public Safety personnel will receive a market adjustment increase of 5.8% for Police and 6.4% for Fire.

Council Goal
Enhance the quality of life within Highland Village, while meeting the needs and expectations of the residential and business community.

Continue to Provide Superior Public Safety, Customer Service, Social, and Health Services to the Community

- ✓ Maintain our recognized model in Police and Fire services, while continuing to explore and develop programs to discourage crime and enhance safety.
- ✓ Investigate operational efficiencies in regard to utilization of public safety resources without compromise to safety of residents and businesses.
- ✓ Promote proactive programs and agreements to provide public safety (i.e. Vacation Watch, Police Involving Parents, cooperative interagency and interlocal agreements, as well as high visibility and community involvement for our Police and Fire employees).
- ✓ Support social services such as Youth and Family Services, the Children's Advocacy Center, and other community organizations that provide services to the residents in our region.
- ✓ Actively pursue effective Code Enforcement to maintain high standards throughout the community.
- ✓ Provide all City functions in a courteous, effective, and efficient manner, responding quickly to requests for service and providing timely responses to customer complaints.
- ✓ Investments in operations will continue to be made in technology that will optimize customer service.
- ✓ Promote responsible pet ownership through our Animal Services.
- ✓ Maintain effective emergency management disaster readiness.

Conduct the Business of the City in a Fiscally Responsible Manner

- ✓ Retain our current AA+ bond rating.
- ✓ Adhere to financial policies that are maintained to promote fiscal responsibility.
- ✓ Explore new and innovative revenue sources where appropriate, and pursue efficiencies to minimize expenditures.
- ✓ Promote and utilize Highland Village business whenever possible in making municipal purchases.
- ✓ Adopt City budgets within the confines of the existing tax rate and in context of the five-year forecast to demonstrate sustainability and emphasize funding of capital projects when capacity is available.

Promote Quality Transportation Services

- ✓ Continue implementation of the Thoroughfare Master Plan.
- ✓ Advocate the significance of DCTA rail and bus services for Highland Village residents and retail development shoppers, and secure adequate DCTA availability for residents.
- ✓ Identify and monitor the FM 2499 corridor to effectively accommodate vehicular traffic while protecting the integrity of our neighborhoods.
- ✓ Enhance pedestrian oriented means of travel in Highland Village and install improved pedestrian crossing systems aimed at enhancing public safety.
- ✓ Work with the Texas Department of Transportation (TxDOT) on the reconstruction of IH 35E.

Employ High Quality, Service Oriented Personnel

- ✓ Foster a work force comprised of professional, highly qualified, and customer friendly employees.
- ✓ Provide a work environment that promotes a high level of job satisfaction for employees.

- ✓ Promote educational standards and re-education opportunities that provide career development structure.
- ✓ Provide innovative and flexible compensation to ensure we remain competitive in our market.
- ✓ Provide succession planning for key positions throughout the City.

Provide for a Diversified Business Climate

- ✓ Promote existing and new retail businesses in Highland Village with the Highland Village Business Association (HVBA), emphasizing high quality retail and restaurants.
- ✓ Enhance open communication between all government entities, the business community, City Hall, and city residents.
- ✓ Pursue economic development and redevelopment through the use of innovative programs to emphasize retention and the expansion of existing business, especially on older developments.
- ✓ Instill a sense of community in all of Highland Village's businesses and residential neighborhoods.
- ✓ Uphold and enhance our commitment to public education and communication through holiday promotions, special events, shopping center meetings, and other available venues.

Provide Quality Leisure Opportunities

- ✓ Review existing, and consider new, recreational offerings for the residential and business communities on a regular basis to satisfy the growing needs of the community.
- ✓ Continue to support community and special events.
- ✓ Continue implementation of the Parks Master Plan as well as the Inland Trail System Master Plan, and the related facilities and additions as deemed appropriate.
- ✓ Maintain the excellence of the Highland Village Park System, maximizing the functionality of each park area.
- ✓ Continue to explore grant and alternative funding opportunities when possible.
- ✓ Connect the trail systems throughout the City where feasible.

Work to Instill a "Sense of Community" in Highland Village Residents

- ✓ Continue to build a sense of community through avenues such as newsletters and the City website.
- ✓ Work to find new ways to involve more residents in the civic process and to serve on Boards and Commissions, with the hope of developing new leaders from a cross section of the community.
- ✓ Create avenues that allow residents and members of the business community to have a sense of pride living and working in Highland Village.
- ✓ Utilize social media outlets to share information and involve residents.
- ✓ Identify and facilitate volunteer activities that serve the community.

Expand the Leadership Role of the Entire Council by Active Participation in Community Groups and Professional Development

- ✓ Council members will actively represent the City of Highland Village and participate in community groups, intergovernmental agencies, and professional associations.
- ✓ Encourage participation of Boards and Commission members in City activities.
- ✓ Support and advance Highland Village's participation at the local, state, and national levels.
- ✓ Maintain contact with area schools and promote programs that have a positive influence for youth in the community.

- ✓ Council members will utilize professional development opportunities provided by the Texas Municipal League (TML) and other professional groups.
- ✓ Continue exploring ways to inform residents and businesses about regional and state legislative developments that impact our City and its residents.

To Make Highland Village Developments and its Operations Sustainable so they Protect and Enhance the City's Quality of Life

- ✓ Evaluate City operations to identify areas where resources can be conserved in the provision of public service without significantly affecting the quality of service.
- ✓ Where financially and operationally practical, purchase supplies for City services that are comprised of recyclable materials and/or will minimally impact the environment with their use.
- ✓ Actively recycle materials to divert items from landfills and initiate programs to promote recycling by the City's residents, businesses, and visitors.
- ✓ Uphold and enhance our commitment to public education and communication with regard to recycling and environmentally friendly programs.
- ✓ Enhance water conservation for the City and its customers.
- ✓ Maintain comprehensive programs to manage environmental and health concerns when possible, such as programs to address mosquito abatement that are appropriate and effective, with an emphasis on proactive action.

III. GENERAL FUND BUDGET HIGHLIGHTS

The General Fund supports all municipal operations with the exception of water, wastewater, and drainage utility operations.

For this Fiscal Year, we have experienced a 6% growth in our property values from Denton Central Appraisal District. Although it is the largest element of General Fund revenues, property tax is only one of several revenue sources used to fund City operations. Other sources include sales tax, franchise fees, fines, development fees, charges for service, interest income, and miscellaneous revenue. The tax rate is split between two components – Maintenance & Operations and Debt Service.

The proposed base Fiscal Year 2017 – 2018 General Fund expenditures total \$16,682,650 with \$415,409 identified for supplemental requests. An additional \$500,000 Economic Development Incentive is identified in the City Manager budget as a potential contingency item. These expenditures are accounted for in twelve separate department budgets, which reflect a base budget increase of 2.1% from Fiscal Year 2016 – 2017, or an increase of 4.6% including supplemental requests minus the Economic Development Incentive.

	FY 2017 Budget	FY 2018 Base	FY 2018 Supplemental	FY 2018 Total
City Manager	646,560	691,357	500,000	1,191,357
Finance	1,483,887	1,515,676	-	1,515,676
Human Resources	552,948	526,670	28,600	555,270
City Secretary	304,402	339,955	-	339,955
Information Services	1,109,963	1,048,903	-	1,048,903

Police	4,676,887	4,714,112	119,100	4,833,212
Fire	2,846,905	2,992,157	131,100	3,123,257
Community Services	425,512	449,477	-	449,477
Streets	1,374,669	1,446,257	-	1,446,257
Building/Fleet Maintenance	898,459	867,516	-	867,516
Parks	1,571,130	1,637,477	136,609	1,774,086
Recreation	<u>448,527</u>	<u>453,095</u>	-	<u>453,095</u>
Total Expenditures	\$ 16,339,849	\$ 16,682,650	\$ 915,409	\$ 17,598,059

Employee Salary and Benefits

- Our historic and current budget structure for the Personnel Category of the General Fund Budget has consistently ranged from 69% to 70%.
- The budget includes a 4% increase structured as a performance/merit pool and salary adjustment for employees, with the exception of Public Safety employees. Public Safety personnel will receive a market adjustment increase of 5.8% for Police and 6.4% for Fire. Our surrounding market cities are aggressive in their recruitment of Police Officers and Firefighters. To ensure we remain competitive with the market, we have adjusted salaries accordingly.
- In an ongoing effort to provide quality health care options, we are maintaining coverage with our current health insurance provider with an increase of 15%.

Community Identity

- Our first gated community, which will provide 102 single family residential units for residents age 55 or older, is currently under construction.
- Doubletree Ranch Park is open and fully operational. We are closely monitoring operations and expenditures in accordance with our operations budget for the park.

Public Safety

- Our Community Policing model focusing on “Prevention through Citizen Awareness and Involvement” continues to be successful for the Police Department.
- The Highland Village Fire Department is a professional organization that delivers unmatched service to citizens, regardless of whether the need is an emergency or a routine event.

Infrastructure

- In our current CIP for both the General Fund and Enterprise Funds, we have identified facilities and infrastructure that will need to be addressed with growth and development of Highland Village.

- We continue to model our existing water and wastewater systems for Capital Planning for future issuance of Utility Bonds.

IV. FINANCIAL ASSESSMENT

The City of Highland Village continues to be strong financially. Through sound fiscal management over the years, the City has positioned itself well to cope with growth, create a positive atmosphere for economic development, and provide greater flexibility on budgetary issues. The City is able to balance revenues and expenditures while maintaining a high level of service.

Fund Balance

One unrestricted measure of a city's financial strength is the level of its Fund Balance. The City's estimated unrestricted Fund Balance in the General Fund is projected to be approximately \$4.5M. This balance represents 26% of Fiscal Year 2018 total General Fund expenditures, exceeding the 20% Fund Balance reserve requirement established by the City's Financial Policies.

Bond Ratings

The City's bond ratings are further evidence of its financial strength. Standard and Poor's, one of the nation's largest bond rating agencies, maintained its AA+ rating for General Obligation and affirmed the City's bonds are considered to be of excellent investment quality. For General Obligation bonds, the rating agencies commented that the City has a strong economy, strong tax base growth, very strong budgetary flexibility supported by strong financial practices, very strong management and Financial Policies, stable financial performance, and solid reserve levels.

2017 Bond Issuance – Proposed November 7, 2017 Bond Election

PROPOSITION A: THE ISSUANCE OF \$2,860,000 GENERAL OBLIGATION BONDS FOR STREET IMPROVEMENTS

With evaluation of the City's street infrastructure, a number of streets have been identified that are at the end of their life cycle and in need of full reconstruction. Due to the large expense of reconstruction, these projects are typically funded through bond issues every five years. The streets targeted for this bond grouping include:

First Grouping (\$2.8M)	
Rosedale Street	Springway Drive
Ranier Court	Mockingbird Drive
Catesby Place	Post Oak Drive
Rockland Drive	Pecan
Hickory Ridge Drive	Raintree Drive
Oak Forest Drive	Greensprings Street
Winding Creek Drive	Duvall Boulevard
Dickinson Drive	Baird Circle
S Clearwater Drive	Donna Circle
Scenic Drive	Savanna Drive
N Clearwater Drive	Arbor Court

PROPOSITION B: THE ISSUANCE OF \$4,290,000 GENERAL OBLIGATION BONDS FOR PARK AND RECREATION IMPROVEMENTS

Unity Park

Unity Park is the sole community park for the City and, as such, is heavily utilized by residents. The park was primarily constructed in the 1990s and further supplemented with enhancements since then. Currently, identified needs are largely related to maintenance and rehabilitation.

- Kids Kastle is substantially at the end of its useful life. It was constructed with treated wood that has been closely monitored to ensure it is safe for our kids however, it requires replacement. New recycled plastic materials will be mutually beneficial providing increased safety and less maintenance.
- The ponds at Unity Park have been compromised with the accumulation of silt and will require dredging along with related improvements to mitigate this issue in the future. A drainage study for this area was completed in Fiscal Year 2017 to identify the scope of improvements needed to address drainage considerations. The recommendation emanating from this study is to make improvements necessary to accommodate a 50-year flood, which will also benefit the surrounding area.
- An expressed need for a softball field to complement the existing baseball fields has prompted consideration to redevelop a section of the park. This redevelopment will also include addressing adjacent sidewalk sections in need of repair and adjustment to meet ADA guidelines.

Parks (Unity Park)	Total
Softball Field / General Improvements	\$ 1,021,250
Pond Improvements	925,431
Kids Kastle	600,250
TOTAL	\$ 2,546,931

Other Identified Parks Projects

- Brazos Park Parking Lot Extension – A parking lot was constructed at Brazos Park (adjacent to the Municipal Complex) several years ago to relieve parking on adjacent streets. As a result of the popularity of these fields, the current parking is not sufficient to accommodate the number of people using the park. The projected cost to complete this project is \$353,000.
- Sunset Point Park – This park site is classified as a mini park and serves local residents as a neighborhood park that provides water access to Lewisville Lake. By developing the park site we hope to eliminate existing erosion issues and safety concerns. Additionally, completing the roadway will allow emergency vehicle access and turn around capabilities. The design for Sunset Point Park was completed in Fiscal Year 2017. Public input was solicited, followed by approval from City Council. Estimated cost for this project is \$162,700.
- Victoria Park Walking Trail / Track – This project entails resurfacing of the walking track at Victoria Park. The existing condition of the track is deteriorating, creating potential tripping hazards. Anticipated cost of this project is \$275,000.
- Highland Village Road Trail Segment (Municipal Complex to Sellmeyer Lane) – The Highland Village Community Development Corporation (4B) depleted remaining bond proceeds with the completion of Doubletree Ranch Park. To allow working capital balances to be restored, there is no capacity to issue new debt for several years. However, this particular trail section was identified by the Corporation as a priority, as long as there is available funding to construct it. A large number of residents adjacent to this section do not have direct access to the Inland Trail System connecting them to

Lions Club Park, Lakeside Community Park, or Doubletree Ranch Park. This presents a potential safety issue due to people trying to traverse Highland Village Road to access these amenities. The estimated cost for this trail section is \$922,300.

Total Proposed Parks Projects (Presented as a Single Proposition)

Total Construction Proposed Parks Bond Proposition	
Unity Park Improvements	\$ 2,546,931
- Softball Field / General Improvements	\$ 1,021,250
- Pond Improvements	925,431
- Kids Kastle	600,250
Brazos Parking Lot Extension	353,000
Victoria Park Walking Trail Resurface	198,000
HV Road Trail (City Hall - Sellmeyer)	922,300
Sunset Point Park	162,700
TOTAL	\$ 4,182,931

With the inclusion of associated issuance costs, the ballot propositions will reflect the following amounts:

Streets Projects	\$2,860,000
Parks Projects	<u>\$4,290,000</u>
Total	\$7,150,000

Debt Service Fund

This fund is utilized to account for the debt obligations of the City. Debt Service for Fiscal Year 2017 – 2018 is \$2,389,567 reflecting a decrease of \$251,233 from Fiscal Year 2017 due to expiring debt service. The corresponding Debt Rate portion of the tax rate for Fiscal Year 2018 decreased from 15% to 12%, even with taking into consideration the proposed reduced tax rate. This in turn provides debt capacity for the proposed November Bond Election for the aforementioned Streets and Parks Projects. Projected ending Fund Balance for the Debt Service Fund is \$157,342.

Utility Fund

A primary and critical task of any City is the provision of water and wastewater service to its residents. To its credit, Highland Village has secured a stable and reliable source for each of these services through owning and operating five water wells and a subscription with Upper Trinity Regional Water District (UTRWD), which are expected to be sufficient through build-out.

The Utility Fund is an Enterprise Fund that is financed primarily through user charges. Utility rates are maintained to derive sufficient revenues to meet the obligations associated with the provision of water and wastewater services. They are established to pay for delivery and maintenance of water and wastewater to City residents. The structure of the rate is bifocal, with charges associated with wholesale water/wastewater purchases from UTRWD presented as a pass-through charge to residents, and separate rates to address the City's cost of service.

In conjunction with the recommended ballot propositions for Streets and Parks Projects, the Utility Fund will issue a \$2,700,000 Certificate of Obligation. This Certificate of Obligation will

address replacement of the AC waterline, restoration of the wastewater system to help reduce Inflow and Infiltration (I&I) to the wastewater system, wastewater line replacement, and painting of the elevated water tank.

The proposed rate changes will provide an estimated 20% increase however, the percent of increase will vary with usage level. In general, the increase for both water and wastewater will be impacted at the lower usage levels. The proposed changes will provide sufficient revenues to address associated expenditures for both water and wastewater costs. An in-depth [education campaign](#) began in August to raise awareness and inform residents of the upcoming changes.

V. CONCLUSION

In preparing the Fiscal Year 2017 – 2018 Budget, it is our goal to develop a budget that will maintain the desired quality of life, while balancing the needs of the residents. This year's budget document represents a collective effort by City Council and City Staff to meet the challenge. In our development of the budget, there are three essential areas that remain our focus in the fundamental understanding of government's role in providing enhanced core services to our residents: policy coordination and implementation between Council and staff; communications; and measurement and evaluation. City Staff will continue to review and evaluate internal operations for opportunities to reduce costs and improve the provision of funded services.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Leavitt".

Michael Leavitt
City Manager

CITY OF HIGHLAND VILLAGE

COUNCIL BRIEFING

AGENDA# 17 **MEETING DATE: 08/22/17**

**SUBJECT: Conduct Public Hearing on the Proposed Budget and Tax Rate
for Fiscal Year 2017-2018**

PREPARED BY: Ken Heerman, Assistant City Manager

BACKGROUND:

Truth in Taxation requires two public hearings before implementing a tax rate if a rate is **considered** which will exceed the lower of the rollback or effective rate. The effective rate is generally equal to the prior year's taxes divided by the current taxable value of properties that were also on the tax roll in the prior year. The current tax rate of \$.56963, in place since 2000 exceeded the roll-back rate this year. At the July 25th Meeting, Council voted to consider the lower rollback rate of \$.568022 for this year's budget. But as this still exceeds the effective rate of \$.54305, the public hearings are required.

IDENTIFIED NEED/S:

The proposed tax rate of \$.568022 is reduced from last year.

The proposed budget can be viewed on the City website at:
<http://tx-highlandvillage.civicplus.com/DocumentCenter/View/4304>

OPTIONS & RESULTS:

Budget calendar:

- August 18th
 - City Manager Recommended Budget posted on City Website
- August 22nd (Regular Council Meeting)
 - Public Hearing on tax rate and budget
- September 12th (Regular Council Meeting)
 - Public Hearing on tax rate and budget
 - 1st read on tax rate and budget
- September 26th (Regular Council Meeting)
 - 2nd read on tax rate and budget

RECOMMENDATION:

Council to conduct a public hearing on the proposed tax rate and budget for FY 2017-2018.

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 18

MEETING DATE: 08/22/17

SUBJECT: Consider Ordinance 2017-1232 Authorizing A Fee To Defray Costs Of Collecting Delinquent Fines, Fees, Court Costs, And Other Debts Pursuant To Article 103.0031 Of The Texas Code Of Criminal Procedure

PREPARED BY: Ken Heerman, Assistant City Manager

BACKGROUND:

The City has a significant sum of uncollected fines and fees assessed by the Highland Village Municipal Court of Record (Court). However, the City has never previously engaged an attorney or other vendor to collect such fees as authorized by Texas Code of Criminal Procedure art. 103.0031. The current sum of unpaid fines and fees now warrants the engagement of an attorney or other to seek to collect such unpaid sums.

IDENTIFIED NEED/S:

In order to provide funds to compensate an attorney or other vendor engaged in collecting delinquent municipal court fines and fees for a city, Texas Code of Criminal Procedure art. 103.0031 allows a 30% collection fee to be added to all fines and fees that are 60 days delinquent, which is then paid to the collection firm. This will ensure that the offender pays the collection fee (with no cost to the City), allowing the City to collect 100 percent of the delinquent amount.

PROGRESS TO DATE: (if appropriate)

A draft ordinance has been prepared authorizing the collection fee authorized by Texas Code of Criminal Procedure art. 103.0031.

RECOMMENDATION:

Approve the first read of Ordinance 2017-1232.

CITY OF HIGHLAND VILLAGE, TEXAS

ORDINANCE NO. 2017-1232

AN ORDINANCE OF THE CITY OF HIGHLAND VILLAGE, TEXAS, AUTHORIZING THE FEE TO DEFRAY COSTS OF COLLECTING DELINQUENT FINES, FEES, COURT COSTS, AND OTHER DEBTS PURSUANT TO ARTICLE 103.0031 OF THE TEXAS CODE OF CRIMINAL PROCEDURE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article 103.0031 of the Texas Code of Criminal Procedure authorizes the City of Highland Village to contract with a private attorney or public or private vendor for the collection of the fines or fees imposed by the City of Highland Village Municipal Court of Record ("the Court") described in Texas Code of Criminal Procedure Article 103.0031(a) and to impose an additional fee in the amount of thirty percent on each debt or account receivable that is more than sixty days past due and which has been referred to the contracted attorney or vendor for collection; and

WHEREAS, the City of Highland Village has determined that it is in the public interest to ensure the prompt payment of delinquent court-imposed fines, fees, court costs, and other debts as provided by said statute and intends to engage a private attorney or public or private vendor to collect such amounts; and

WHEREAS, the City of Highland Village finds it in public interest to authorize the collected fee described and authorized by Article 103.0031(b) of the Texas Code of Criminal Procedure;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF HIGHLAND VILLAGE, TEXAS, THAT:

SECTION 1. In accordance with Article 103.0031(b) of the Texas Code of Criminal Procedure, there is hereby imposed an additional fee of thirty percent (30%) on all debts and accounts receivable, i.e.: fines, fees, court costs, restitution, and other debts that are more than sixty (60) days past due and have been referred to a private attorney or public or private firm for collection.

SECTION 2. If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 3. This ordinance shall be effective from and after its date of passage and publication as required by law or charter.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS ON THE FIRST READING, THIS THE 22nd DAY OF AUGUST, 2017.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS ON THE SECOND READING, THIS THE _____ DAY OF _____, 2017.

APPROVED:

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, City Attorney
(kbl:8/17/17:89263)

CITY OF HIGHLAND VILLAGE

COUNCIL BRIEFING

AGENDA#	19	MEETING DATE:	08/22/17
SUBJECT:	Consider Resolution 2017-2697 Authorizing Agreements with Perdue Bandon Fielder Collins & Mott LLP for Collection of Delinquent Utility Accounts and Collection of Delinquent Court Fines and Fees		
PREPARED BY:	Ken Heerman, Assistant City Manager		

BACKGROUND:

The City utilizes the law firm of Perdue Bandon Fielder Collins & Mott LLP for collection of delinquent property taxes, but does not currently have an agreement for services for the collection of delinquent Municipal Court and Utility balances.

IDENTIFIED NEED/S:

With issued citations, a defined process through the Municipal Court allows an opportunity to pay the associated fine or dispute the charges with the Municipal Judge or if requested, a jury comprised of Highland Village residents. If the ultimate disposition results in a fine, defendants have an opportunity to pay the fine or set up time payments with the Court.

The Municipal Court makes a concerted effort to provide opportunity for defendants to satisfy their obligations and avoid warrant status. The Court typically makes several attempts to resolve the citation without the necessity of a warrant being issued. Once defendants missed the appear-by date issued on their citations, defendants are sent a courtesy late notice and given 15 days to respond before the warrant process is initiated. In the late-letter, defendants are given several options as to how they can handle their citation. Payments can be made online, by mail or in person. A Cash Bond can also be posted in order to secure an appearance before the judge in the event a defendant wants to plead not guilty or discuss further disposition options. A defendant can also request a payment plan to pay the fine in installments. When a defendant fails to pay a payment plan installment, the court sends the defendant a Notice to Appear for a Show Cause hearing. At the show cause hearing, the defendant may go before the judge to explain the reason for the missed payment and get back on the payment plan in order to avoid a warrant being issued. If the defendant fails to appear at the show cause hearing, a Capias Pro Fine warrant is issued, at which time a \$50.00 warrant fee is added to the amounts owed. If the defendant does not respond to the initial late notice by the response date, then an Arrest Warrant is issued.

Once a warrant is issued, it is sent to the PD Dispatch for entry into the Regional Database which is controlled by the Dallas Marshall's Office. The warrant remains active for the next 3 years or until the defendant is arrested. If no arrest has been made by the third anniversary of issuance of the arrest warrant, the warrant is pulled from Regional and returned to the court for either further collection attempts or administrative closure. Often, further collection attempts are unsuccessful because the offense occurred more than 3 years earlier, or the

court has old contact information from the original citation and is unable to locate the defendant. At Year-end FY 2016, the outstanding warrants totaled \$105,965.

The City also has delinquent receivables associated with uncollected utility billing charges. Utility bills are sent the first of each month, with a due date of the 20th of that month. While the City has authority to suspend service until the account is paid, our practice has been to not take this action unless payment has not been received for the current month as well as the following month charges. Especially during Summer months, this can amount to a substantial balance due. Often, the party responsible for the payment of the delinquent account will move out of the City with these outstanding charges, leaving the City little recourse regarding collection. At Year-end FY 2016, the Over-120 day delinquent balance totaled \$325,130. Please note: this balance is primarily comprised of former residents that have left the City with outstanding charges. In the most recent report, we have only a few residents with outstanding balances exceeding 120 days - roughly \$1,500 in total. (And we are actively addressing these).

PROGRESS TO DATE: (if appropriate)

As previously stated, the City currently contracts with Perdue Bandon Fielder Collins & Mott LLP for collection of delinquent property taxes. They are one of the largest, most-experienced firms in the State with respect to collection of delinquent receivables. The firm's performance on behalf of the City has been excellent. In addition to delinquent property taxes, The Perdue firm also provides collection services for delinquent Court and Utility payments. Adding these services to our contract is proposed for Council consideration.

- The firm uses software that works seamlessly with the software system currently used by the City, minimizing additional workload on City Staff.
- A collection fee of 30% of the delinquent court fines and fees amount is proposed. Article 103.0031 of the Texas Code of Criminal Procedure authorizes adding such fee to the amounts past due in most instances. Council will be requested to authorize the addition of this 30% collection fee to all fines / fees that are 60 days delinquent. This will ensure that the offender pays the collection fee (with no cost to the City), allowing the City to collect 100 percent of the delinquent amount.
- Collection of utility balances is a much greater challenge for any collection agency, with little leverage once the debtor has moved away from the City. If we pursue this service as well, the proposed fee for this is 20%, paid out of the amounts that are collected, of collected.

RECOMMENDATION:

Approve Resolution 2017-2697.

CITY OF HIGHLAND VILLAGE, TEXAS

RESOLUTION NO. 2017-2697

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, AUTHORIZING AGREEMENTS WITH PERDUE BRANDON FIELDER COLLINS & MOTT LLP FOR COLLECTION OF DELINQUENT UTILITY ACCOUNTS AND DELINQUENT MUNICIPAL COURT FINES AND FEES; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, City Administration has recommended that firm of Perdue Brandon Fielder Collins & Mott LLP be engaged to provide services relating to the collection of amounts due and owing the City for fines and fees assessed by the City of Highland Village Municipal Court of Record and for the provision of water, wastewater, and solid waste collection services; and

WHEREAS, the City Council of the City of Highland Village finds it to be in the public interest to concur in such recommendation; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to negotiate and enter into agreements with the firm of Perdue Brandon Fielder Collins & Mott LLP to provide services related to:

- A. The collection of delinquent municipal court fees and fines in accordance with Texas Code of Criminal Procedure Art. 103.0031; and
- B. The collection of delinquent payments on water, wastewater, and solid waste collection accounts.

SECTION 2. This Resolution shall be effective immediately upon approval.

PASSED AND APPROVED this the 22nd day of August, 2017.

APPROVED:

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, City Attorney
(kbl:8/17/17:89182)

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 20

MEETING DATE: 08/22/17

SUBJECT: Consider Resolution 2017-2696 Adopting a Design Manual for the Installation of Network Nodes and Node Support Poles

PREPARED BY: Scott Kriston, Director of Public Works

BACKGROUND:

During its 85th Regular Session ending in May, 2017, the Texas Legislature enacted Chapter 284 of the Texas Local Government Code ("Chapter 284"). Chapter 284 relates to the installation of equipment, specifically wireless network equipment, in public rights-of-way. Chapter 284 provides a state-wide regulatory scheme regarding the installation of such equipment and limits individual cities' abilities to further regulate the location of such equipment within the public right-of-way. Such regulations are contrary to the historical right of Texas cities to regulate the improvements that are located with its streets and alleys and to levy a reasonable and fair charge for the use of public right-of-way by private businesses. Chapter 284 is applicable to the installation of "network nodes" (equipment that enables wireless communications between the communications network and the user's equipment) and related equipment, and applies to both the "wireless service provider" (who provides the service directly to the public) and to "network providers" (which are entities who do not provide service to the end-user, but instead build and install the equipment on behalf of a wireless service provider).

Cities may require that providers apply for a permit, and require compliance with the city's right-of-way management ordinance and design manual, but cannot apply zoning regulations to the installation of such equipment or require a license agreement. If providers desire to place equipment on city service poles (i.e. traffic lights, signage, light poles), a city can require a co-location agreement.

Cities are prohibited from enacting any type of moratorium relating to installation of equipment under Chapter 284, and there are specific time limitations which apply to the processing of applications. Chapter 284 is effective September 1, 2017, and provides that any current agreements or ordinances remain applicable to network nodes which are operational before that date.

IDENTIFIED NEED/S:

Staff presented Ordinance 2017-1231 for consideration August 8, 2017. First read of said Ordinance passed unanimously. During the presentation, staff notified the Council that the proposed Design Manual would be forthcoming at the August 22, 2017 meeting for consideration and approval. Chapter 14 "Public Ways and Public Places" of the Code of Ordinances, Division 7 "Network providers", Sec. 14.07.155 "Compliance with the Design Manual" identifies the City Council to adopt a Design Manual for the installation of Network

Nodes and support poles.

PROGRESS TO DATE:

The Director of Public Works, in consultation with the City Manager and City Attorney, has prepared a Design Manual for consideration which addresses the identified need, a copy of which will be provided prior to the council meeting.

BUDGETARY IMPACT/ORDINANCE CHANGE: (if appropriate)

Unknown.

RECOMMENDATION:

Approve Resolution 2017-2696.

CITY OF HIGHLAND VILLAGE, TEXAS

RESOLUTION NO. 2017-2696

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS ADOPTING A DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES IN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Chapter 284 of the Local Government Code, effective September 1, 2017, provides a regulatory framework governing the installation of Nodes and Node Support Poles in the City's Right-of-Way; and

WHEREAS, pursuant to Chapter 284, Network Providers installing wireless equipment in the City's Right-of-Way must comply with the Design Manual adopted by the City for that purpose; and

WHEREAS, Chapter 284 authorizes the City to designate Design Districts and Historic Districts, wherein heightened aesthetic requirements may be applied to such equipment; and

WHEREAS, the City of Highland Village has determined that certain areas of the City which should be designated as design districts, for purposes of Chapter 284, in order to preserve the character and aesthetic qualities of these areas;

WHEREAS, the City Council, in the exercise of its legislative discretion, has concluded that it is in the public interest to adopt the attached Design Manual should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE, TEXAS, THAT:

SECTION 1. The Highland Village Design Manual for the Installation of Network Nodes and Node Support Poles, attached hereto as Exhibit "A", is hereby adopted. All Network Providers seeking to install wireless equipment in the right-of-way of the City of Farmers Branch pursuant to Chapter 284 of the Local Government Code and Code of Ordinances Chapter 14, Division 7, must comply with this Design Manual.

SECTION 2. This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED this the 22nd day of August, 2017.

APPROVED:

Charlotte J. Wilcox, Mayor

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, City Attorney

(kbl:8/18/17:89266)

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 21 **MEETING DATE: 08/22/17**

SUBJECT: Receive Legislative Update

PREPARED BY: Michael Leavitt, City Manager

COMMENTS

City staff will provide a brief update on city-related bills passed by the 85th Texas Legislature.

Legislative Update

The following are the summaries of the major city-related bills passed during the first special session of the Eighty-Fifth Legislature. The text of any bill is available at the Texas Legislature's website.

Elections

1S.B. 5 (Hancock/Goldman) – Voter Fraud: makes several changes relating to the prevention of fraud in the conduct of an election. Among other things, the bill provides that:

1. A person commits an offense if the person: (a) knowingly votes or attempts to vote a ballot belonging to another person, or by impersonating another person; or (b) knowingly marks or attempts to mark any portion of another person's ballot without the consent of that person, or without specific direction from that person how to mark the ballot.
2. Precinct election records must be preserved for at least 22 months after election day, regardless of whether the election involves a federal office.
3. An electronic signature is not permitted on an application for a ballot by mail.
4. A person commits a state jail felony if the person: (a) knowingly provides false information on an application for ballot by mail; (b) intentionally causes false information to be provided on an application for ballot by mail; (c) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or (d) knowingly and without the voter's authorization alters information provided by the voter on an application for ballot by mail.
5. An offense under (4)(d) does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.
6. For an application for ballot by mail submitted by fax or electronic transmission to be effective, the application also must be submitted by mail and be received by the early voting clerk not later than the fourth business day after the submission by fax machine or electronic transmission is received.
7. The early voting clerk must, not later than the 30th day after election day, deliver notice to the attorney general of cancellation requests received, including certified copies of cancellation requests, applications, and carrier envelopes, if available.
8. The signature verification committee may compare the signatures on each carrier envelope certificate and the voter's ballot application with any two or more signatures of the voter made within the preceding six years and on file with the county clerk or voter registrar.
9. The early voting clerk must, not later than the 30th day after election day, deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because: (a) the voter was deceased; (b) the voter already voted in person in the same election; (c) the signatures on the carrier envelope and ballot application were not executed by the same person; (d) the carrier envelope certificate lacked a witness signature; or (e) the carrier envelope certificate was improperly executed by an assistant.
10. A person commits an offense if the person knowingly or intentionally makes any effort to: (a) influence the independent exercise of the vote of another in the presence of the ballot or during the voting process; (b) cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or (c) cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or any other official election-related form or document.

11. Legislation related to early voting at residential care facilities that passed during the regular session of the 85th Legislature is repealed.

(Effective December 1, 2017.)

Other Finance and Administration

1H.B. 7 (Phelan/Kolkhorst) – Tree Mitigation Fees: provides that:

1. "Tree mitigation fee" means a fee or charge imposed by a city in connection with the removal of a tree from private property.
2. A city may not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that: (a) is diseased or dead; or (b) poses an imminent or immediate threat to persons or property.
 1. A city may not require a person to pay a tree mitigation fee for the removed tree if the tree: (a) is located on a property that is an existing one-family or two-family dwelling that is the person's residence; and (b) is less than 10 inches in diameter at the point on the trunk 4.5 feet above the ground.
 2. "Residential structure" means: (a) a manufactured home as that term is defined by the Texas Manufactured Housing Standards Act; (b) a detached one-family or two-family dwelling, including the accessory structures of the dwelling; (c) a multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or (d) any other multifamily structure.
3. A city that imposes a tree mitigation fee for tree removal on a person's property must allow that person to apply for a credit for tree planting to offset the amount of the fee.
4. An application for a credit under (5), above, must be in the form and manner prescribed by the city.
5. To qualify for a credit, a tree must be: (a) planted on property: (i) for which the tree mitigation fee was assessed; or (ii) mutually agreed upon by the city and the person; and (b) at least two inches in diameter at the point on the trunk 4.5 feet above ground.
6. For purposes of determining where an off-site tree must be planted, the city and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the city.
7. The amount of a credit provided to a person must be applied in the same manner as the tree mitigation fee assessed against the person and: (a) equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person's residence; (b) at least 50 percent of the amount of the tree mitigation fee assessed against the person if: (i) the property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and (ii) the person is developing, constructing or renovating the property not for use as the person's residence; or (c) at least 40 percent of the amount of the tree mitigation fee assessed against the person if: (i) the property is not a residential structure; or (ii) the person is constructing or intends to construct a structure on the property that is not a residential structure.
8. As long as the city meets the requirement to provide a person a credit under (8), above, the bill does not affect the ability of or require a city to determine: (a) the type of trees that must be planted to receive a credit, except as provided by (7), above; (b) the requirements for tree removal and corresponding tree mitigation fees, if applicable; (c) the requirements for

tree-planting methods and best management practices to ensure that the tree grows to the anticipated height at maturity; or (d) the amount of a tree mitigation fee.

9. The bill does not apply to property within five miles of a federal military base in active use as of December 1, 2017.

(Effective December 1, 2017.)

Community and Economic Development

S.B. 6 (Campbell/Huberty) – Annexation: completely rewrites the Municipal Annexation Act to severely curtail the ability of cities to annex property. Generally, the bill provides that:

1. A “Tier 1 county” means a county with a population of less than 500,000, except that Kaufman County is not included because it has “Texas Parks and Wildlife Department Freshwater Fisheries.”
2. A “Tier 2 county” means a county with a population of 500,000 or more, or a Tier 1 county that opts to become a Tier 2 county through a petition and signed by 10 percent of the registered voters in the county and approval at a countywide election.
3. A “Tier 1 municipality” means a municipality wholly located in one or more tier 1 counties that proposes to annex an area wholly located in one or more tier 1 counties.
4. A tier 2 municipality is authorized to annex an area with a population of 200 or more only if the following conditions are met, as applicable: (a) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (b) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.
5. A tier 2 municipality may annex an area with a population of less than 200 only if the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area, or if the voters don’t own more than 50 percent of the land in the area, the petition must be signed by the owners of more than 50 percent of the land in the area.

More specifically, the bill provides – among many other things – that:

1. A tier 1 municipality can continue to annex under the existing procedures for plan annexations (subchapter C three-year negotiation process) or exempt annexations (subchapter C-1 service plan, notice, and hearing process).
2. Most of the existing, statutory authority to annex is codified into the newly-created subchapter B.
3. In relation to provision of solid waste services by a tier 1 municipality, before the second anniversary of the date an area is annexed, the municipality may not: (a) prohibit the collection of solid waste in the area by a privately owned solid waste management service provider; or (b) offer solid waste management services in the area unless a privately owned solid waste management service provider is unavailable.
4. A new subchapter C-2 is and certain bracketed provisions are transferred to that subchapter.
5. A new subchapter C-3 is created that applies only to a tier 2 municipality and authorizes annexation if each owner of land in the area requests annexation, two public hearings are held,

and the governing body negotiates and enters into a written agreement with the owners of land in the area for the provision of services in the area;

6. A new subchapter C-4 is created that applies only to a tier 2 municipality and authorizes annexation of an area with a population of less than 200 only if the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area.
7. The governing body of a city that proposes to annex an area under subchapter C-4 must, among other things, adopt a resolution that includes a description of the services to be provided to the area.
8. Not later than the seventh day after the date the governing body adopts the resolution under (8), above, the city must mail to each resident in the area proposed to be annexed notification of the proposed annexation that includes: (a) notice of a public hearing required by the bill; (b) an explanation of the petition process; and (c) a description, list, and schedule of services to be provided by the city.
9. If the governing body of a city proposes to annex an area under subchapter C-4 and a petition protesting the annexation is signed by a number of registered voters of the municipality proposing the annexation equal to at least 50 percent of the number of voters who voted in the most recent municipal election, the municipality may not complete the annexation of the area without approval of a majority of the voters of the municipality voting at an election.
10. A new subchapter C-5 is created that applies only to a tier 2 municipality and authorizes the annexation of an area with a population of 200 or more only if the following conditions are met, as applicable: (a) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (b) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.
11. The governing body of the municipality that proposes to annex an area under subchapter C-5 must, among other things, follow procedures that are similar to (8-9), and (10), above.
12. With regard to an existing strategic partnership agreement, a municipality shall follow the procedures established under the strategic partnership agreement for full-purpose annexation of an area.
13. With certain very limited exceptions, beginning September 1, 2017, a tier 2 city may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area only if it complies with the procedures in (6-12), above.
14. Conforming changes are made to the “disannexation for failure to provide services” provision in current law, with some changes making the process more favorable to those in an annexed area.
15. A municipality may not annex an area unless it provides written notice of the proposed annexation within a certain timeframe to each public entity and political subdivision that is located in or provides services to the area that includes, among other things: (a) any financial impact on the public entity or political subdivision resulting from the annexation, including any changes in the public entity’s or political subdivision’s revenues or maintenance and operation costs; and (b) any proposal the municipality has to abate, reduce, or limit any financial impact on the public entity or political subdivision.
16. Until the 20th anniversary of the date of the annexation of an area that includes a permanent retail structure, a municipality may not prohibit a person from continuing to use the structure for the indoor seasonal sale of retail goods if the structure: (a) is more than 5,000 square feet; and (b) was authorized under the laws of this state to be used for the indoor seasonal sale of retail goods on the effective date of the annexation.
17. The annexation law may be enforced only through mandamus or injunctive or declaratory relief and a city’s immunity from suit is waived for that purpose.

18. A court may award reasonable and necessary attorney's fees to the prevailing party in an action brought under the annexation law.

With regard to specific cities or types of annexations, the bill provides that:

1. The City of Austin: (a) may not annex an area that is subject to a strategic partnership agreement executed on or after September 1, 2009, and for which an area proposed for annexation will be annexed before January 1, 2021, unless it complies with (6-12), above; and (b) may not annex the territory in certain municipal utility districts unless a majority of the total number of voters voting in all of the districts' elections vote in favor of authorizing the annexation.
2. The City of Fort Worth is authorized to annex without consent certain enclaves that are surrounded by the city.
3. Various exemptions from certain annexation requirements for the City of Houston are removed.
4. A city may annex all or part of the area located in an industrial district designated by the governing body under the requirements applicable to a tier 1 municipality, but only: (a) on or after the date the contract expires, including any period renewing or extending the contract; or (b) as provided by the contract.
5. A city may annex an area for full or limited purposes, under the annexation provisions applicable to that city under the bill (i.e., an approval election for an annexation in a Tier 2 county), any part of the area located within five miles of the boundary of a military base, but that the annexation proposition for such an annexation shall be worded to allow the voters to choose between either annexation or providing the city with the authority to adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study.
6. No provision is made for non-annexation agreements with agriculture exempt property, thus such agreements are governed by their existing terms.

(Effective December 1, 2017.)

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.

CITY OF HIGHLAND VILLAGE
COUNCIL BRIEFING

AGENDA# 22	MEETING DATE: 08/22/17
SUBJECT:	Status Reports on Current Projects and Discussion on Future Agenda Items
PREPARED BY:	Angela Miller, City Secretary

COMMENTS

This item is on the agenda to allow a Councilmember to inquire about a subject of which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

- 35Express Project Update



UPCOMING EVENTS

Expected Absences: Councilmember McGee (August 22nd)

August 22, 2017 **Regular City Council Mtg. 7:30 pm**

September 4, 2017 **Labor Day Holiday (City Offices Closed)**

September 7, 2017 Zoning Board of Adjustment Mtg. 7:00 pm (if needed)

September 12, 2017 **Regular City Council Mtg. 7:30 pm**

September 18, 2017 Park Board Mtg. 6:00 pm (if needed)

September 19, 2017 Planning & Zoning Commission Mtg. 7:00 pm (if needed)

September 21, 2017 Public Art Advisory Board Mtg. 7:00 pm (if needed)

September 26, 2017 **Regular City Council Mtg. 7:30 pm**

October 5, 2017 Zoning Board of Adjustment Mtg. 7:00 pm (if needed)

October 10, 2017 **Regular City Council Mtg. 7:30 pm**

October 16, 2017 Park Board Mtg. 6:00 pm (if needed)

October 17, 2017 Planning & Zoning Commission Mtg. 7:00 pm (if needed)

October 19, 2017 Public Art Advisory Board Mtg. 7:00 pm (if needed)

October 24, 2017 **Regular City Council Mtg. 7:30 pm**

November 2, 2017 Zoning Board of Adjustment Mtg. 7:00 pm (if needed)

November 14, 2017 **Regular City Council Mtg. 7:30 pm**

November 16, 2017 Public Art Advisory Board Mtg. 7:00 pm (if needed)

November 20, 2017 Park Board Mtg. 6:00 pm (if needed)

November 21, 2017 Planning & Zoning Commission Mtg. 7:00 pm (if needed)

November 23 - 24, 2017 **Thanksgiving Holiday (City Offices Closed)**

November 28, 2017 **Regular City Council Mtg. 7:30 pm**

Please visit www.highlandvillage.org or the City Hall bulletin board for latest additions, updates and changes

By: Karen Bradley, Administrative Assistant - City Secretary Office