

ALLEN OWEN  
Mayor

JERRY WYATT  
Councilmember at Large Position 1

CHRIS PRESTON  
Councilmember at Large Position 2



YOLANDA FORD  
Councilmember District A

DON SMITH  
Councilmember District B

ANTHONY G. MAROULIS  
Councilmember District C

FLOYD EMERY  
Mayor Pro Tem  
Councilmember District D

## CITY COUNCIL SPECIAL MEETING AGENDA

Notice is hereby given of a Special City Council Meeting to be held on **Monday, August 7, 2017, at 6:00 p.m.** at: **City Hall, Council Conference Room, 2nd Floor, behind the Council Chamber**, 1522 Texas Parkway, Missouri City, Texas, 77489, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551 of the Texas Government Code.

### 1. CALL TO ORDER

### 2. DISCUSSION/POSSIBLE ACTION

- (a) Discuss proposed amendments to Chapter 74, Parks and Recreation, of the Missouri City Code, relating to the use of park facilities.
- (b) Discuss the implementation of Senate Bill 1004 of the 85th Regular Session of the Texas Legislature, relating to certain wireless facilities in the public right-of way.

### 3. CLOSED EXECUTIVE SESSION

*The City Council may go into Executive Session regarding any item posted on the Agenda as authorized by Chapter 551 of the Texas Government Code. Notice is hereby given that the City Council may go into Executive Session in accordance with the following provision of the Government Code:*

**Texas Government Code, Section 551.087** – Deliberations regarding commercial or financial information that the governmental body received from a business prospect that the governmental body seeks to locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations: retail, business, and industrial development prospects.

4. **RECONVENE** into Special Session and Consider Action, if any, on items discussed in Executive Session.

### 5. ADJOURN

**In compliance with the Americans with Disabilities Act, the City of Missouri City will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 24 hours prior to the meetings. Please contact Maria Jackson, City Secretary, at 281.403.8686.**

### CERTIFICATION

I certify that a copy of the August 7, 2017, agenda of items to be considered by the City Council was posted on the City Hall bulletin board on August 4, 2017, at 4:00 p.m.

Yomara Frias, City Secretary Department

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the \_\_\_\_ day of \_\_\_\_\_, 2017.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

# Proposed Amendments to Chapter 74

City Council Special Meeting  
August 7, 2017



## Summary of Proposed Changes

1. Prohibited conduct
2. Administrative changes
3. Definitions
4. Park use permits
5. Use of athletic fields
  - Recognized sports association
  - Athletic field use permits
6. Miscellaneous provisions



## Prohibited Conduct



## Proposed Additional Prohibited Conduct

- ❖ Being in a park between 11:00 p.m. and 6:00 a.m. without a park use permit  
[current ordinance prohibits a person from being in the park between the hours of 10:00 p.m. and 6:00 a.m., except during daylight savings time, a person is prohibited from being in the park between the hours of 11:00 p.m. to 6:00 a.m.]
- ❖ Play a sport in an athletic field, a park, or the recreation center that could create an unreasonable risk of damage to or destruction of the park or create a hazard or danger to the public



## Proposed Administrative Changes



## Proposed Administrative Changes

- ❖ Director may promulgate written rules for the general administration of the department and written rules for orderly management of the athletic fields, parks, and the recreation center, provided such rules do not conflict with the code, city policies, and federal or state law.
- ❖ The Parks Board shall review and make advisory recommendations on adoption of, changes, modifications, and amendments to park rules promulgated by the director.



## Proposed Definitions

## Proposed Definitions

- ❖ **Athletic field:** any land, facility, structure, or portion thereof, owned, leased, controlled or operated by the city and that is designated by the director for the purpose of playing a specific sport. This term includes the tennis center or a portion thereof, but excludes the city's golf courses and the recreation center.
- ❖ **Athletic field use permit:** a current and valid permit for conducting a sports event at an athletic field.

## Proposed Definitions

- ❖ **Park:** any land building, facility, structure, or portion thereof, owned, leased, controlled or operated by the city for park or recreational purposes, including any natural feature, such as a lake, river, creek or stream, thereon, and any appurtenances thereto. The term specifically excludes an athletic field, the city's golf courses, and the recreation center.
- ❖ **Park use permit:** a current and valid permit issued for the use of an athletic field, park, or the recreation center, other than for a sporting event at an athletic field.

## Proposed Definitions

- ❖ **Sports association:** a nonprofit organization that exists primarily to operate or conduct amateur sporting events.
- ❖ **Sporting event:** an event or a program, or a series of events or programs, at which an individual or a group of individuals play or compete against one another in a specific sport

## Park Use Permits

### Proposed Additional Reasons for Denial of Park Use Permit

- ❖ The applicant charges an admission fee, parking fee or requires anything of value in order to attend the proposed activity, other than a fee to participate in the proposed activity.
- ❖ Proposed activity is similar to an activity that is being or will be conducted, sponsored or co-sponsored by the city

# Use of Athletic Fields



## Current Regulations – Annual Event Permits

- ❖ **Annual event permits** – use of athletic field for 12 months
  - ❖ Applicant must have an IRS 501(c)(3) designation.
  - ❖ Applicant must pay a deposit and fee.
  - ❖ Participants must consist of a majority (51%) of Missouri City residents, except for Sta-Mo Park, which may consist of City of Stafford residents.
  - ❖ A majority of the applicant's board of directors must be majority of Missouri City residents.
  - ❖ Applicant must have made authorized improvements of at least \$50,000 to one or more city parks.
  - ❖ Permit holder must apply for tournament event permits for all tournament events (maximum 8 per permit period).



## Current Regulations – Annual Event Permits

- ❖ Applicant must perform field, restroom, and concession maintenance, and is responsible for own supplies, amenities, and facilities.
- ❖ Applicant must provide current financial statements, list of league affiliations, by laws, most current roster of participants, names of players, the designation as to the city in which each player resides, and schedule of practices, games, and opening day ceremonies.
- ❖ Applicant must acknowledgment that background checks have been conducted on all coaches and managers.
- ❖ Permit holder receives priority in field assignments.



## Current Regulations – Seasonal Event Permits

- ❖ **Seasonal event permits** – use of athletic fields for less than one year, excluding single-use events and tournament events
  - ❖ Applicant must pay a deposit and fee
  - ❖ Applicant must provide most current financial statement, list of league affiliations, by-laws, most current roster with names of players, the designation as to the city in which each player resides, all schedules of practices and games, and schedule of opening day ceremonies.
  - ❖ Provide acknowledgment that background checks have been conducted on all coaches and managers.
  - ❖ Parks Department provides routine maintenance, excluding field preparation, to park grounds, and facilities.
  - ❖ Associations that have a majority of Missouri City residents (51%) will be given priority over associations that do not have a majority of Missouri City residents.



## Current Regulations – Tournament Event Permits

- ❖ **Tournament event permits** – use of athletic field for no more than 3 consecutive days for a singular purpose in which groups or individuals play against one another in a series of sporting events.
- ❖ Annual event permit holders that retain all tournament proceeds pay a not-for-profit tournament event deposit and fee.
- ❖ Seasonal event permit holders with a 501(c)(3) designation that retain all tournament proceeds pay a not-for-profit tournament event deposit and fee, provided that such association may not conduct more than eight tournaments in a calendar year
- ❖ Persons without an annual or seasonal event permit, with a 501(c) designation, and that retains all tournament proceeds shall pay a not-for-profit tournament event deposit and fee, provided that such associations may not conduct more than four tournaments in a calendar year.
- ❖ All other persons or associations shall pay a for-profit-tournament event deposit and fee, provided that there shall be no more than two for-profit tournament events per calendar year per park.
- ❖ Provide an acknowledgement that background checks have been conducted on all coaches and managers.



## Current Regulations – Single-Use Event Permits

- ❖ **Single-use event permit** - one-time use of an athletic field for a sporting event.
  - ❖ Pay a deposit and fee



## Proposed Regulations for Use of Athletic Fields

### Proposed Regulations for Use of Athletic Fields

- ❖ Recognized sports association (RSA) designation; and
- ❖ Athletic field use permits

## Recognized Sports Associations

### Definition of RSA

**Recognized sports association (RSA)** means a sports association that is designated by the parks board to conduct amateur sports events for individuals under the age of 18 at an athletic field, other than at the city's tennis center.

### How do I qualify as an RSA?

- ❖ A nonprofit sports association exempt from state and federal taxation and in good standing with the State of Texas and the Internal Revenue Service;
- ❖ At least 25 percent or three (3) members of the sports association's board, whichever number is greater, must be residents of the city;
- ❖ The sports association must conduct at least one board meeting per year;

### How do I qualify as an RSA?

- ❖ At least 51% of the sports association's participants in the proposed sports event at the requested athletic field must reside within the territorial limits of the city, provided that for use of the Sta-Mo Park, the 51% requirement may be met by participants who reside within the territorial limits of the city and the City of Stafford;
- ❖ Designate at least two (2) employees or volunteers to be present at all sports events at the requested athletic field, provided that such persons must be at least 21 years of age and have completed training in CPR and basic first aid.

## How do I qualify as an RSA?

- ❖ Each coach or trainer who will participate in the sporting event at the requested athletic field must have completed training in concussion education;
- ❖ Have comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence with the city named as an additional insured;



## How do I qualify as an RSA?

- ❖ Adopt a criminal background check policy or procedure that is used by the association to determine an individual's eligibility to work for or volunteer with the sports association in sporting events involving individuals who are under the age of 18; and
- ❖ Attest that each employee or volunteer who will be involved in the sporting events at the requested athletic field has undergone and passed a criminal background check in accordance with the association's criminal policy or procedure.



## Annual Application Cycle

- ❖ At least once a year, the director will publish, on the city's website, the names and locations of and the time periods, that athletic fields will be available for use by RSAs for that year, and the date the city will begin and stop accepting applications for RSA designation and RSA renewal, and how to obtain information to file an application.
- ❖ Sports associations may apply for RSA designation or RSA renewal during this time period.



## Applications for RSA Designation or RSA Renewal

- ❖ Applicant must provide all information required to qualify as an RSA.
- ❖ Applicant must provide a schedule of dates and times of sports events – tryouts, practices, league games, tournaments, opening day or closing day ceremonies, including "makeup" dates. The schedule must incorporate periods of non-use to allow turf rest and recovery. Year round-use schedules or schedules that don't incorporate rest periods, will not be approved.
- ❖ Applicant must provide documentation that supports historical ties to the athletic field requested, including historical data that shows the applicant's on-going, recurrent or established use of the athletic field or dates and times the applicant has held sports events at such field.
- ❖ Any other information that may be requested by the director to fully evaluate and review an application.



## Review by Director

- ❖ After expiration of the application deadline, the director will forward, to the Parks Board, each complete application for RSA designation and application for renewal of RSA designation with a recommendation to approve or deny the applications and the proposed schedule of sporting events.



## Approval of Applications for RSA Designation

- ❖ The Parks Board will grant applications for RSA designation, approve schedules of sporting events, and provide in writing any conditions or restrictions attached to the grant of RSA designation, unless one or more of the following conditions is met:
  - ❖ Application contains false or misleading information, or required information is omitted;
  - ❖ The applicant refuses to comply with the conditions or restrictions; or
  - ❖ The application or proposed activity does not comply with the requirements of chapter 74, applicable city ordinances, regulations, policies, procedures, or rules, or applicable federal or state law.



### Approval of Applications for Renewal of RSA Designation

- ❖ The Parks Board will approve applications for renewal of RSA designation, schedules of sporting events, and provide, in writing, any conditions or restrictions attached to the grant of RSA designation, unless one or more of the following conditions are met:
  - ❖ Applicant does not meet eligibility requirements;
  - ❖ Failure to maintain participation rate during the most recent RSA designation;
  - ❖ Failure to maintain assigned athletic fields as required during the most recent RSA designation;



### Approval of Applications for Renewal of RSA Designation

- ❖ Failure to make any required payment during the most recent RSA designation;
- ❖ Failure to adhere to the sporting events schedule approved by the Parks Board during the most recent RSA designation; or
- ❖ Failure to maintain required insurance.



### Revocation of RSA designation

- ❖ The Parks Board may revoke RSA designation if the applicant fails to maintain the required insurance.



### Grant of RSA Designation

- ❖ Each RSA will be granted exclusive use of the athletic field(s) for which RSA designation was sought at the dates and times set forth in the approved schedule of sporting events during the RSA's season.
- ❖ RSA designation will be granted until all eligible athletic fields have been assigned. Once all are assigned, no more RSA designations will be granted until the next application cycle, and then, only if an athletic field is available for use.



### Priority of RSA designation

- ❖ Order of precedence for granting RSA designation shall be as follows:
  - ❖ The sports association seeking RSA renewal for the requested athletic field and most recently held RSA designation of said athletic field.
  - ❖ The sports association having the longer duration of historical ties to the requested athletic field as determined by an established, on-going or recurrent use of the field shall have second priority.
  - ❖ The sports association having the greater number of participants who reside within the territorial limits of the city shall have third priority.
  - ❖ For new athletic fields, the sports association with the greater number of participants who reside within the territorial limits of the city will have priority.



### Additional Conditions for RSAs

- ❖ An RSA must maintain the assigned athletic field during and after the RSA's season in accordance with a park rule for maintenance of athletic fields promulgated by the director.
- ❖ An RSA must pay the fee(s) for use of athletic fields in the amount(s) specified in a resolution adopted by city council establishing a schedule of fees.
- ❖ An RSA must maintain the required insurance.
- ❖ An RSA must maintain the results of the criminal background check for 3 years and make available such records upon the city's request.





## Appeals

- ❖ A person may appeal the Parks Board's decision to deny an application or revoke RSA designation to the city council by submitting a written notice of appeal to the city secretary within 10 days of the date of the Parks Board's decision. The city council's decision shall be final.

## Athletic Field Use Permits

### Proposed Requirements for Granting an Athletic Field Use Permit

- ❖ An applicant cannot charge an admission fee, parking fee, or anything of value for entry to the proposed sports event; other than participation fees in the sporting event
- ❖ An applicant must have the required insurance.
- ❖ An applicant must designate at least two individuals who are at least 21 years old to be present at or during the sports event and proof that such persons have obtained CPR and first aid training.

### Approval of an Athletic Field Use Permit

- ❖ The director will grant an athletic field use permit, unless one or more of the following conditions are met:
  - ❖ The application or activity does not comply with the requirements of chapter 74, applicable city ordinance, resolutions, policies, procedures, regulations, rules, or federal and state law;
  - ❖ The proposed activity will unreasonably interfere with or detract from the general public's use and enjoyment at the requested field;
  - ❖ The proposed activity will create an unreasonable risk of damage to or destruction of the requested athletic field, park or the recreation center;

### Approval of an Athletic Field Use Permit

- ❖ Inadequate provision has been made for the supervision and security of the activity;
- ❖ An athletic field use permit has otherwise been issued for use of the requested field at the date and time requested in the application;
- ❖ The application contains false or misleading information or required information is omitted;
- ❖ The applicant refused to comply with the conditions or restrictions imposed by the director;
- ❖ The applicant charges an admission fee, parking fee or requires anything of value in order to attend the proposed activity, other than a fee to participate in the proposed sporting event; or
- ❖ The proposed activity is similar to an activity that is being conducted, sponsored or co-sponsored or will be conducted, sponsored or co-sponsored by the city.

## Miscellaneous Provisions

## City events

- ❖ An event sponsored or co-sponsored by the city will have priority use of a park, the recreation center or an athletic field at all times.
- ❖ The city reserves the right to cancel any issued permit or use of an athletic field on a date or time designated for use by an RSA. If the city cancels a permit, the city will issue a refund, and in the case of an RSA, reschedule use of the athletic field for a mutually agreeable date and time.



## Transfer of Permit

- ❖ A permit holder or an RSA shall not assign or transfer a permit or RSA designation for use by another person without prior written consent of the director



## Proposed Next Steps

- ❖ August 7, 2017: First reading of ordinance
- ❖ August 21, 2017: Second reading of ordinance



## Questions



## Chapter 74 - PARKS AND RECREATION

### ARTICLE I. - IN GENERAL

#### Sec. 74-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alcoholic beverage* means any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for consumption purposes, either alone or when diluted.

*Amplified sound* means any sound projected or transmitted by artificial means, including, but not limited to, amplifiers, loudspeakers or any similar device.

*Athletic field* means any land, facility, structure, or portion thereof, owned, leased, controlled or operated by the city that is designated by the director for the purpose of playing a specific sport. This term specifically includes the city's tennis center or a portion thereof, but excludes the city's golf course and the recreation center.

*Athletic field use permit* means a current and valid permit, other than a park use permit, issued in accordance with this chapter for conducting a sporting event at an athletic field.

*Department* means the city parks and recreation department.

*Director* means the director of the department or his designee.

*Improvement* means a building, facility or structure constructed, erected, affixed or placed on a park or athletic field that is designed to have a life expectancy of three or more years.

*Park* means any land, building, facility, structure, or portion thereof, owned, leased, controlled or operated by the city for park or recreational purposes, including any natural feature, such as a lake, river, creek or stream, thereon, and any appurtenances thereto. This term specifically excludes an athletic field, the city's golf course and golf course facilities, and the recreation center.

*Park use permit* means a current and valid permit, other than an athletic field use permit, issued in accordance with this chapter for the use of an athletic field, a park or the recreation center.

*Permit* means a park use permit or an athletic field use permit.

*Recognized sports association* or *RSA* means a sports association that is designated, in accordance with this chapter, by the parks board to conduct amateur sporting events for persons under the age of 18 at an athletic field, other than at the city's tennis center.

*Recreation center* means the city's recreation center, including any areas that are used for recreational purposes, such as a gym or interior room, thereon.

*Season* means a period of time beginning no earlier than four weeks prior to the date of a sports association's first officially sanctioned sporting event at an athletic field and no later than the date of the final officially sanctioned sporting event at the athletic field, provided that, such period of time shall not exceed six continuous months.

*Sports association* means a nonprofit organization that exists primarily to operate or conduct amateur sporting events.

*Sporting event* means an event or a program or a series of events or programs at which an individual or a group of individuals play or compete against one another in a specific sport.

*Vessel* means any device propelled by motor, wind or human power and that is used to transport individuals across water. The term includes, but is not limited to, a boat, a yacht, a cruiser, a canoe, a raft or other watercraft.

*Wake* means a track of waves left by a vessel moving through water in excess of five miles per hour.

**Sec. 74-2. - Prohibited conduct in athletic fields, parks, and the recreation center.**

- (a) Except as otherwise provided in this chapter, it shall be unlawful for any person to conduct or engage in or cause another person to conduct or engage in any of the following activities within an athletic field, a park or the recreation center, as applicable:
- (1) Hitch, fasten, lead, ride, drive or let loose any animal or fowl of any kind, provided that this shall not apply to a dog when led by a cord or chain not more than six feet long;
  - (2) Operate or use any motor-driven vehicle such as a scooter, a motor-assisted scooter, a motorcycle, a go-cart or similar motor-driven vehicle except in certain areas, roadways, parking areas, drives, or pathways typically designated or authorized for such purpose;
  - (3) Carry or discharge fireworks, air guns, bows and arrows, slingshots, rockets, torpedoes or any device that could be used to project an object that could create a hazard or danger to the public, except with the prior written approval of the director;
  - (4) Damage, cut, break, injure, deface, disturb, displace or remove any natural or manmade properties;
  - (5) Cut or remove any wood, turf, grass, soil, rock, sand, gravel, mulch or fertilizer, except with the prior written approval of the director;
  - (6) Camp overnight;
  - (7) Consume or possess any alcoholic beverage;
  - (8) Operate or use a bicycle or any motor-driven vehicle, such as a scooter, a motor-assisted scooter, a motorcycle, a go-cart or similar motor-driven vehicle, in areas

designated for riding or driving of such vehicles in a manner that disregards the safety of persons or property;

- (9) Park a vehicle or a trailer on the grass, lawn or anywhere else, other than in an area designated for that purpose;
  - (10) Park a vehicle or a trailer other than within a single parking space in a parking lot when visible parking space lines have been placed upon such parking lot;
  - (11) Park a vehicle or a trailer in a parking lot in a manner that obstructs or hinders access to or from such parking lot;
  - (12) Distribute, post, place or erect any advertising, handbill, circular, bill, notice, paper or other advertising device in the recreation center;
  - (13) Sell or offer for sale any merchandise, services, food, non-alcoholic beverages or alcoholic beverages;
  - (14) Practice, carry on, conduct or solicit for any trade, occupation, business or profession;
  - (15) Swim, bathe or wade in any water or waterway except in water or waterway that is designated for such purpose;
  - (16) Operate or use any vessel in any water or waterway except where the water or waterway is specifically designated and posted for a specific purpose;
  - (17) Operate the motor of a vessel propelled by a motor in a "Slow, No Wake" zone in a manner that creates a wake;
  - (18) Start or maintain a fire, except for a cooking fire, which shall be started or maintained only in a stove, fireplace, barbecue pit or portable camp stove;
  - (19) Leave a started fire unattended without first completely extinguishing the fire;
  - (20) Use or be within a park between the hours of 11:00 p.m. and 6:00 a.m., except with the prior written approval of the director;
  - (21) Play a sport that could create an unreasonable risk of damage to or destruction of the athletic field, park or recreation center or create a hazard or danger to the public; or
  - (22) Conduct or engage in any conduct or activity for which a permit or RSA designation is required without a current and valid permit issued or an RSA designation granted in accordance with this chapter.
- (b) It shall be an affirmative defense to prosecution that a permit has been issued for a prohibited activity under subsection (a) of this section or the activity is otherwise allowed by this chapter.

- (c) The provisions of this section shall not be construed to apply to employees, contractors or agents of the city in the lawful discharge of their respective duties.
- (d) All water and waterways in a park are hereby designated "Slow, No Wake" zones. The director may, at his discretion, place signs or buoys indicating an area as a "Slow, No Wake" zone. It is an affirmative defense to prosecution that no buoy or sign indicates an area is a "Slow, No Wake" zone.

**Sec. 74-3. - Liability.**

The city is not responsible for property that is lost, damaged or misplaced in an athletic park, a park or the recreation center.

**Sec. 74-4. – Improvements and keys.**

- (a) Except as otherwise provided in this chapter, a person shall not make an improvement to an athletic field, a park or the recreation center without prior written authorization from the director. Any improvement made to an athletic field, a park or the recreation center whether made with or without authorization from the director, shall become the property of the city.
- (b) The holder of a permit or an RSA that is provided keys to an athletic field or a park, as applicable, shall ensure that such athletic field or park is secured from entry after use by the permit holder or RSA. All keys shall be returned to the city on or before the earlier of the expiration of the permit or the end of the RSA's season. If the keys provided to a permit holder or an RSA are lost, the permit holder or RSA shall immediately report such loss to the director. A permit holder or an RSA may not change locks or make additional copies of keys to an athletic field or a park without the prior written approval of the director, and shall make requests of any required maintenance of a lock to the director.

**Sec. 74-5. – City events.**

An event sponsored or co-sponsored by the city at an athletic field, a park or the recreation center will be given priority at all times. The city reserves the right to cancel a permit or restrict use of an athletic field, a park or the recreation center at a date or time designated for use by a permit holder or an RSA that conflicts with the date or time of a city sponsored or co-sponsored event. In the event of such cancellation or restriction, the city may refund, to the permit holder, any permit fees in proportion to the amount of time designated for use, which was not used or, in the case of an RSA, the city may reschedule use of the athletic field at a mutually agreeable date and time.

**ARTICLE II. – ADMINISTRATION**

**DIVISION 1. – PARKS BOARD**

**Sec. 74-31. – Establishment, membership, and compensation of members.**

There is hereby created and established a parks board in and for the city. The parks board shall consist of an odd number of members that shall be not less than seven members and not more than 13 members as set by the city council. The members of the parks board shall be

appointed by the mayor subject to confirmation by the city council. Members of the parks board shall serve without compensation, and each shall be a resident of the city.

**Sec. 74-32. - Terms of members.**

- (a) The terms of the members of the parks board shall be for two years and shall be as follows:
  - (1) The terms of the odd-numbered positions shall be from July 1 of each odd-numbered year until June 30 of the next odd-numbered year.
  - (2) The terms of the even-numbered positions shall be from July 1 of each even-numbered year until June 30 of the next even-numbered year.
- (b) The terms of such members shall continue until their successors have been appointed and confirmed. A vacancy of a position for any reason shall be filled by appointment as provided in section 74-31, and the duration of such appointment shall be for the remainder of the term of the position.

**Sec. 74-33. – Officers, rules of procedure, and records.**

The parks board shall organize by electing from its membership a chair and a vice-chair, each of whom shall hold office for one year or until his successor shall have been elected. Five board members shall constitute a quorum for the transaction of the parks board business. The parks board may adopt its own rules of procedure for the conduct of its business, subject to the approval of such rules by the city council. The parks board shall keep a record of its proceedings and shall file the record with the city secretary.

**Sec. 74-34. - Duties.**

Except as provided in subsection (7) of this section, the parks board shall serve in an advisory capacity to the city council regarding policy matters pertaining to city parks. The parks board shall have the following specific purposes:

- (1) Solicit funds, gifts and bequests for park acquisitions, additions and improvements;
- (2) Review and make advisory recommendations to the city council on proposed park acquisitions, additions and improvements;
- (3) Review and make advisory recommendations on park and recreation matters submitted by the director or the city council;
- (4) Promote and stimulate public interest in parks and recreational programs, and assist the director in solicitation of the cooperation of public and private agencies that may have a direct or indirect involvement in parks and recreation;
- (5) Review and make advisory recommendations on amendments to this chapter to the city council;

- (6) Review and make advisory recommendations on adoption of, changes, modifications and amendments to rules promulgated by the director in accordance with this chapter; and
- (7) Review and approve or deny applications for RSA designation or applications for renewal of RSA designation, and revoke RSA designations in accordance with this chapter.

**Sec. 74-35. - Board not empowered to obligate city.**

Except as provided in section 74-34(7), the parks board shall have no right, power or authority to obligate or bind the city in any manner whatsoever.

**DIVISION 2. – AUTHORITY OF THE DIRECTOR**

**Sec. 74-51. – Promulgation of written policies and rules and effect of violation.**

The director shall have the authority to promulgate written policies for the general administration of the department and written rules for the orderly management and use of athletic fields, parks, and the recreation center by the public, provided that, such policies and rules do not conflict with applicable city ordinances, resolutions, policies, procedures or regulations and federal and state law. A copy of the rules adopted under this subsection shall be published on the city's website and maintained for public inspection in the offices of the director and the city secretary.

**ARTICLE III. - PERMITS.**

**DIVISION. 1 – GENERAL CONDITIONS**

**Sec. 74-61. - Conditions or restrictions on the granting of permits or RSA designations.**

The director or the parks board, as applicable, may impose reasonable conditions or restrictions on the issuance of a permit or granting of RSA designation, including, but not limited to, one or more of the following:

- (1) Restrictions on fires, fireworks, amplified sound, type of sport, use of animals, equipment or vehicles, the number of persons to be present, the location of any bandstand or stage, or such other restrictions as may be reasonable considering the intended activity or use, its effect on the general public's use and enjoyment of the athletic field, park, or recreation center, and the possible injury or damage to persons or property;
- (2) A requirement that the applicant pay a fee as set forth in a resolution adopted by the city council to defray the cost of furnishing security by the city at the proposed activity;
- (3) A requirement that the applicant pay a fee as set forth in a resolution adopted by the city council as a security deposit for the repair of any damage to city property or the cost of cleanup, or both;



- (4) A requirement that the applicant furnish additional sanitary and refuse facilities that might be reasonably necessary considering the intended activity for which the permit or RSA designation is being sought;
- (5) A requirement that the applicant for a park use permit provide proof of a comprehensive general liability insurance policy issued by an insurance company authorized to do business in the State of Texas; provided that, the city shall be named as an additional insured on such policy and the policy limits of said insurance shall conform to those required by the city manager; or
- (6) A requirement that the applicant agree to indemnify and hold harmless the city and its officers, agents and employees from any and all actions, claims, costs, damages and expenses, including, but not limited to, attorney's fees and court costs, arising out of the use of the athletic field, park or recreation center by the applicant; provided that such indemnification shall apply with respect to all acts or omissions of the applicant and the applicant's invitees, licensees, relatives, friends and their respective invitees, licensees, relatives, and friends associated with the use of such athletic field, park, or recreation center.

**Sec. 74-62. – Requirements for permit holders and RSAs.**

The holder of a permit or an RSA shall:

- (1) Be bound by the requirements of this chapter, all applicable city ordinances, resolutions, policies, procedures and rules, and applicable federal and state laws;
- (2) Be liable for any loss or damage to property or injury or death to persons related to or arising out of the activity for which a permit is issued or RSA designation is granted;
- (3) Not transfer or assign use of an athletic field, a park or the recreation center, as applicable, to another person without the prior written consent of the director;
- (4) Except as otherwise provided in this chapter, have exclusive use of the athletic field, park, or recreation center, as applicable, during the dates and times set forth in the permit or RSA's approved schedule of sporting events; provided that, the director reserves the right to issue a permit or authorize the use of an athletic field, a park, or the recreation center to other persons when such athletic field, park or the recreation center has not been reserved or assigned for use on the dates and times set forth in a permit or an RSA's approved schedule of sporting events;
- (5) Be responsible for the removal of trash and litter generated by the use or activity for which a permit is issued or RSA designation is granted; and
- (6) Be assessed additional fees as set forth in a resolution adopted by the city for the maintenance, cleaning, and other similar services arising from the use or activity for which a permit is issued or RSA designation is granted.

**Sec. 74-63. - Receipt and review of applications for permits.**

The director shall cause all completed applications received pursuant to this article to be immediately time stamped upon receipt by the director. Except for applications filed pursuant to division 3, relating to RSA designations, applications filed pursuant to this article shall be reviewed on a first come, first serve basis; provided that, if two or more applications for a permit are received at the same time, the precedence of approval of such applications shall be determined by an impartial means of chance.

## **DIVISION 2. – PARK USE PERMITS**

### **Sec. 74-81. – Park use permits required for certain activities.**

- (a) A park use permit is required before a person may engage in or conduct the following activities in an athletic field, park or the recreation center:
  - (1) An activity, other than a sporting event at an athletic field, that temporarily excludes others from using an athletic field, a park or the recreation center for the duration of the activity;
  - (2) An exhibit, dramatic performance, motion picture, radio or television broadcast or recording, fair, festival, circus, musical event or similar event;
  - (3) A group activity, organized event or gathering comprising of 50 or more persons, except for a sporting event at an athletic field;
  - (4) The use of amplified sound equipment;
  - (5) The sale or offer for sale of merchandise, services, food or non-alcoholic beverages;
  - (6) The sale, offer for sale, consumption or possession of alcoholic beverages; except that, a park use permit shall not be granted for the sale, offer for sale, consumption or possession of alcoholic beverages during or associated with a sporting event involving individuals under the age of 18 at an athletic field;
  - (7) Camping overnight;
  - (8) Practicing or conducting of, carrying on, or soliciting for any trade or occupation, business or profession; and
  - (9) Being in or using the park between the hours of 11:01 p.m. and 5:59 a.m.
- (b) A park use permit holder shall comply with the provisions of article II of chapter 18 relating to the sale of food and non-alcoholic beverages.
- (c) A park use permit holder shall comply with the provisions of chapter 6 of this code relating to the sale, offer for sale, consumption or possession of alcoholic beverages.
- (d) Events sponsored or co-sponsored by the city are exempt from the provisions of subsection (a) of this section.

- (e) The sale or offer for sale of services by a person authorized by the city to provide such services pursuant to contract is exempt from the provisions of subsection (a)(5) of this section.

**Sec. 74-82. – Applications for park use permits.**

- (a) A person seeking a park use permit shall file an application for a park use permit with the director on an application form provided by the director at least 24 hours before the start time of the proposed activity. The application shall include the following information and shall be accompanied by the payment of a fee in the amount specified in a resolution adopted by the city council establishing a schedule of fees:
  - (1) The name, address, telephone number, and email address of the applicant;
  - (2) The exact nature of the activity for which a permit is sought;
  - (3) The date and time of the activity for which a permit is sought;
  - (4) The name of the athletic field, park or recreation center or area thereof sought to carry out the proposed activity;
  - (5) The number of persons the applicant estimates will attend or participate in the activity;
  - (6) The type of amplified sound equipment to be used, if any;
  - (7) The type of special effects or features to be used, if any, including, but not limited to, a band, a moonwalk, a petting zoo, or a portable stage;
  - (8) For an applicant seeking a park use permit for the sale or offer for sale of merchandise, services, food, non-alcoholic beverages or alcoholic beverages, as applicable, during or associated with a sporting event to be conducted at an athletic field by the holder of an athletic field use permit or an RSA, a written authorization from such athletic field use permit holder or RSA, or an authorized representative of said athletic field use permit holder or RSA, to sell merchandise, services, food, non-alcoholic beverages or alcoholic beverages, as applicable, at such sporting event;
  - (9) Whether a fee, such as an admission fee or parking fee, will be charged or anything of value will be required in order to attend the proposed activity; and
  - (10) Any other information that may be requested by the director to fully evaluate and review the application.
- (b) The director may waive the deadline for filing an application for a park use permit, provided that, a waiver serves a public interest or an emergency exists and the application otherwise meets the requirements of this chapter.

**Sec. 74-83. – Approval or denial of applications for park use permits.**

The director will grant a park use permit, and provide, in writing, any conditions or restrictions attached to the issuance of the permit, unless the director determines that the application meets one or more of the following conditions:

- (1) The application or activity does not comply with the requirements of this chapter, applicable city ordinances, resolutions, policies, procedures, regulations or rules or federal and state law;
- (2) The proposed activity will unreasonably interfere with or detract from the general public's use and enjoyment of the requested athletic field, park or recreation center;
- (3) The proposed activity will create an unreasonable risk of damage to or destruction of the requested athletic field, park or recreation center;
- (4) The proposed activity will create an unreasonable risk of injury to participants or to the public;
- (5) Inadequate provision has been made for the supervision and security of the activity;
- (6) A park use permit has otherwise been issued for use of the athletic field, park or recreation center on the date and time requested in the application;
- (7) The application contains false or misleading information or required information is omitted;
- (8) The applicant refuses to comply with the conditions or restrictions imposed by the director in accordance with section 74-61;
- (9) The applicant charges an admission fee, parking fee or requires anything of value in order to attend the proposed activity, other than a fee to participate in the proposed activity; or
- (10) The proposed activity is similar to an activity that is being conducted, sponsored or co-sponsored or will be conducted, sponsored or co-sponsored by the city.

**Sec. 74-84. – Modification or revocation of park use permits.**

The director may modify or revoke a park use permit issued pursuant to this division if one or more of the following conditions are met:

- (1) Failure to comply with the conditions or restrictions attached to the issuance of the park use permit;
- (2) Failure to comply with the requirements of section 74-62; or
- (3) One or more of the conditions provided in section 74-83 are met.

**Sec. 74-85. – Notice of decisions and appeals.**

- (a) The director will provide notice to the applicant or holder of a park use permit, as applicable, in writing, of the denial, modification or revocation of a park use permit and shall include the reasons for such denial, modification or revocation.
- (b) A person may appeal the director's decision to deny, modify or revoke a park use permit, or any conditions or restrictions attached to the issuance of a park use permit, to the city council by providing a written notice of appeal to the city secretary within 10 days of the date of the notice of such decision. A decision by the city council shall be final.

### **DIVISION 3. – RECOGNIZED SPORTS ASSOCIATIONS**

#### **Sec. 74-91. – Eligibility for RSA designation.**

- (a) A sports association shall meet the following requirements to be deemed eligible to receive an RSA designation:
  - (1) The sports association must be a nonprofit organization that is exempt from state and federal taxation, and in good standing with the state of Texas and the Internal Revenue Service;
  - (2) At least twenty-five percent (25%) or three members of the sports associations' board of directors, whichever number is greater, must reside within the territorial limits of the city as determined by the most-recently approved city tax roll of real property records;
  - (3) The sports association must conduct at least one board of directors' meeting per year as evidenced by the association's board meeting minutes;
  - (4) At least 51 percent (51%) or more of the participants in the sports association's proposed sporting event at the athletic field(s) for which RSA designation is sought must reside within the territorial limits of the city as determined by the most-recently approved city tax roll of real property records; except that, for a sports association seeking RSA designation for use of the Sta-Mo Park, the requirement that at least 51 percent (51%) or more of the participants of the sports association must be city residents may be met by individuals who reside within the territorial limits of the city and the City of Stafford;
  - (5) The sports association must designate at least two (2) employees or volunteers of the association who will be present at and during each of the sports associations' sporting events at the athletic field(s) for which RSA designation is sought; provided that, such employees or volunteers must be at least 21 years of age and have completed training in cardiopulmonary resuscitation (CPR) and basic first aid;
  - (6) Each coach or trainer who will participate in the sports association's proposed sporting event at the athletic field for which RSA designation is sought, must complete training in concussion education;
  - (7) The sports association must have comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence with the city named as an additional insured;

- (8) The sports association must have adopted a written criminal background check policy or procedure that is used by the sports association to determine an individual's eligibility to work for or volunteer with the sports association in sporting events involving individuals who are under the age of 18; and
  - (9) A member of the sports associations' board of directors must attest that each employee or volunteer that will be involved in the sports associations' sporting events at the athletic field for which RSA designation is sought has undergone and passed a criminal background check in accordance with the sports associations' criminal background check policy or procedure.
- (b) A sports association that is granted RSA designation shall maintain the results of the criminal background checks required under subsection (a)(9) of this section for a period of three (3) years from the date the sports association submits an application for RSA designation or an application for renewal of RSA designation, as applicable, and such results shall be available for review upon the city's request.

**Sec. 74-92. – Applications for RSA designation or for renewal of RSA designation.**

- (a) At least once a year, the director will cause to be published, on the city's website, the names and locations of and the time periods that athletic fields will be available for use by RSAs for that year, the date that the city will begin and stop accepting applications for RSA designation and applications for renewal of RSA designation, and how to obtain information to submit such applications to the city.
- (b) A sports association seeking RSA designation or renewal of RSA designation shall submit, in writing, an application for RSA designation or an application for renewal of RSA designation, as applicable, to the director on a form provided by the director for that purpose on or before the date designated by the director as the last date for accepting applications pursuant to subsection (a) of this section. The application shall include the following information and shall be accompanied by the payment of a fee in the amount specified in a resolution adopted by the city council establishing a schedule of fees:
  - (1) The name, address, telephone number, and e-mail address of the applicant;
  - (2) The name, address, telephone number, and email address of the person responsible for the operation or supervision of the applicant's proposed sporting event at the athletic field(s) for which RSA designation is sought;
  - (3) The name and address of the athletic field(s) for which RSA designation is sought;
  - (4) The type of sport that the applicant intends to play on the athletic field(s) for which RSA designation is sought;
  - (5) Proof of the applicant's status as a nonprofit organization and that the applicant is in good standing with the state of Texas and with the Internal Revenue Service as a tax exempt organization; including, but not limited to, a certificate of incorporation as a nonprofit organization and an IRS determination letter;

- (6) A roster of the names and residential addresses, including the street, city, and zip code, of each individual who will participate in the applicant's proposed sporting event at the athletic field(s) for which RSA designation is sought, and if such roster is not available, the names and addresses of each person who participated in the applicant's most recent sporting event; provided that, if granted RSA designation, the applicant shall provide to the city any changes to the roster before the first day the RSA proposes to use the assigned athletic field(s);
- (7) For an applicant who is seeking renewal of RSA designation, in addition to the information required under subsection (b)(6) of this section, a roster of the names and residential addresses, including the street, city, and zip code, of each individual who participated in the applicant's most recent sporting event season conducted at the athletic field(s) for which RSA designation was granted;
- (8) A schedule of the type of sporting events, including, but not limited to, tryouts, practices, leagues, games, tournaments, and opening and closing day ceremonies that will be conducted at the athletic field(s) for which RSA designation is sought, the dates and times that such sporting events will be conducted, and alternative dates and times that may be used by the applicant to conduct such sporting events in the event that the athletic field(s) for which RSA designation is sought is not available for use due to circumstances outside the control of the applicant; provided that, the schedule must incorporate periods of non-use of the athletic field(s) to allow turf to rest and recover and does not request year-round use of such athletic field(s);
- (9) Documentation that demonstrates that the applicant is eligible for RSA designation pursuant to subsections 74-91(a)(2) (relating to board members), (3) (relating to board of directors' meeting), (5) (relating to volunteers), (6) (relating to concussion education), (7) (relating to insurance), (8) (relating to criminal background check policy), and (9) (relating to criminal background checks);
- (10) Documentation that supports the applicant's historical ties to the athletic field(s) for which RSA designation is sought, including, but not limited to, historical data that shows the applicant's on-going, recurrent or established use of such athletic field and the dates and times that the applicant has held sporting events at such athletic field(s); and
- (11) Any other information that may be requested by the director to fully evaluate and review an application.

**Sec. 74-93. – Review of applications for and granting of RSA designation.**

- (a) Upon the expiration of the time period for filing an application pursuant to subsection 74-92(a), the director will forward, to the parks board, each complete application of eligible sports associations, and all accompanying documents received by the director pursuant to subsection 74-92(b), with a recommendation to either approve or deny such application and the proposed schedule of sporting events.
- (b) The parks board will approve applications for RSA designation and schedules of sporting events, and provide, in writing, any conditions or restrictions attached to the grant of RSA

designation, unless the parks board determines one or more of the following conditions are met:

- (1) The application contains false or misleading information, or required information is omitted;
  - (2) The applicant refuses to comply with the conditions or restrictions attached to the grant of RSA designation; or
  - (3) The application or proposed sporting event does not comply with the requirements of this chapter, applicable city ordinances, resolutions, policies, procedures, regulations or rules or federal and state law;
- (c) The parks board will approve applications for renewal of RSA designation and schedules of sporting events, and provide, in writing, any conditions or restrictions attached to the grant of RSA designation, unless the parks board determines that one or more of the following conditions are met:
- (1) One or more of the conditions provided in subsection (b) of this section are met;
  - (2) Failure to maintain the participation rate required under section 74-91(a)(4) during the applicant's most recent RSA designation;
  - (3) Failure to maintain the assigned athletic field(s) as required under section 74-95(b) during the applicant's most recent RSA designation;
  - (4) Failure to make any payment required pursuant to this chapter or applicable city ordinance, resolution, regulation, policy or rule during the applicant's most recent RSA designation;
  - (5) Failure to adhere to the approved sporting event schedule during the applicant's most recent RSA designation; or
  - (6) Failure to maintain the required insurance during the applicant's most recent RSA designation.
- (d) RSA designations will be granted until all eligible athletic fields have been assigned. Once all eligible athletic fields have been assigned, no more RSA designations will be granted until the next application cycle, and then, only if an athletic field is available for use.
- (e) In the event that two or more sports associations meet the conditions for RSA designation, and such sports associations have requested use of the same athletic field on the same dates and times, the order of precedence, with the first paragraph below taking the highest precedence, for granting RSA designation for use of said athletic field shall be as follows:
- (1) The sports association that most recently held RSA designation for use of said athletic field(s) and is seeking renewal of RSA designation for said athletic field(s);
  - (2) In the event that no sports association has priority pursuant to subsection (e)(1) of this section, the sports association having the longer duration of historical ties



to said athletic field(s), as determined by an established, on-going or recurrent use of the athletic field;

- (3) In the event that no sports association has priority pursuant to subsections (e)(1) and (e)(2) of this section, the sports association with the greater number of participants who reside within the territorial limits of the city; and
- (4) If said athletic field(s) is new, the sports association with the greater number of participants who reside within the territorial limits of the city.

**Sec. 74-94. - Revocation of RSA designation.**

The parks board may revoke an RSA designation granted pursuant to this division if the RSA fails to maintain the insurance required under this article.

**Sec. 74-95. – Fees for the use of athletic fields by RSAs.**

An RSA shall pay fees for the use of the athletic field(s) assigned to the RSA in the amount specified in a resolution adopted by the city council establishing a schedule of fees.

**Sec. 74-96. – Maintenance of athletic fields.**

- (a) The city will provide routine maintenance, excluding field preparation, to athletic fields.
- (b) In consideration of receiving priority and exclusive use of an athletic field(s) during the dates and times set forth in the RSA's approved schedule of sporting events, the RSA shall be responsible for providing its own supplies, maintaining the restrooms and concessions during the dates and times set forth in the approved schedule of sporting events, and maintaining the fields of the assigned athletic field(s) during and after the RSA's season in accordance with the rules for field maintenance of athletic fields promulgated by the director in accordance with this chapter.

**Sec. 74-97. – Appeals.**

A person may appeal the park board's decision to deny an application for RSA designation, an application for renewal of RSA designation or to revoke an RSA designation in accordance with subsection 74-85(b). A decision by the city council shall be final.

**DIVISION 4. – ATHLETIC FIELD USE PERMITS**

**Sec. 74-101. – Applications for athletic field use permits.**

A person seeking an athletic field use permit shall file an application for an athletic field use permit with the director, on an application form provided by the director, at least 24 hours before the date of the proposed sporting event. The application shall include the following information and shall be accompanied by the payment of a fee in the amount specified in a resolution adopted by city council establishing a schedule of fees:

- (1) The name, address, telephone number, and e-mail address of the applicant;

- (2) The name, address, telephone number, and email address of the person responsible for the operation or supervision of the applicant's proposed sporting event at the requested athletic field(s);
- (3) The name and address of the requested athletic field(s);
- (4) The type of sport that the applicant intends to play on the requested athletic field(s);
- (5) The date and time the applicant proposes to use the requested athletic field;
- (6) The number of persons the applicant expects to attend the sporting event at the requested athletic field;
- (7) The information required under subsections 74-91(a)(5) (relating to volunteers) and (7) (relating to insurance); and
- (8) Any other information that may be requested by the director to fully evaluate and review the application.

**Sec. 74-102. – Approval or denial of applications for athletic field use permits.**

The director will grant an athletic field use permit, and provide, in writing, any conditions or restrictions attached to the issuance of the athletic field use permit, unless the director determines that the application meets one or more of the conditions provided in section 74-83.

**Sec. 74-103. – Modification or revocation of athletic field use permits.**

The director may modify or revoke an athletic field use permit issued pursuant to this division if one or more of the conditions provided in section 74-84 is met.

**Sec. 74-104. – Notice of decisions and appeals.**

- (a) The director will provide notice of the denial, modification or revocation of an athletic field use permit in accordance with subsection 74-85(a).
- (b) A person may appeal the director's decision to deny, modify, or revoke an athletic field use permit in accordance with subsection 74-85(b). A decision by the city council shall be final.

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**ARTICLE VI. – GOLF COURSES AND GOLF COURSE FACILITIES**

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**Sec. 74-182. – Prohibited conduct on golf courses; exception.**

- (a) *Prohibited conduct.* Except as otherwise provided in this article, the following activities are prohibited:

- (1) It shall be unlawful for an individual to use the Quail Valley La Quinta Golf Course or the Quail Valley El Dorado Golf Course including accompanying cart trails of either course unless such individual registers with, and receives authorization from, the pro shop to use the golf course, except as otherwise set forth in this section.
- (2) It shall be unlawful for an individual to use the Quail Valley La Quinta Golf Course or the Quail Valley El Dorado Golf Course, including accompanying cart trails of either course with a bicycle, skates, a skate board or any similar type of wheeled vehicle, toy or recreational device.
- (3) It shall be unlawful for an individual to conduct or engage in conduct prohibited by section 74-2 at the Quail Valley La Quinta Golf Course or the Quail Valley El Dorado Golf Course, including accompanying cart trails of either course.
- .....
- (c) *Affirmative defense.* It shall be an affirmative defense to prosecution under subsection 74-182(a) that a person has prior written authorization from the appropriate city representative to conduct or engage in such activity.

Chapter 74 - PARKS AND RECREATION

ARTICLE I. - IN GENERAL

Sec. 74-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alcoholic beverage* means any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for consumption purposes, either alone or when diluted.

*Amplified sound* means any sound projected or transmitted by artificial means, including, but not limited to, amplifiers, loudspeakers or any similar device.

~~*Annual event* means use of park grounds and/or facilities for sporting events for 12 months.~~

*Athletic field* means any land, facility, structure, or portion thereof, owned, leased, controlled or operated by the city that is designated by the director for the purpose of playing a specific sport. This term specifically includes the city's tennis center or a portion thereof, but excludes the city's golf course and the recreation center.

*Athletic field use permit* means a current and valid permit, other than a park use permit, issued in accordance with this chapter for conducting a sporting event at an athletic field.

*Department* means the city ~~department of~~ parks and recreation department.

*Director* means the ~~person designated as and occupying the position of~~ director of the department ~~of parks and recreation~~ or his designee.

*Improvement* means any building, facility or structure ~~built~~, constructed, erected, affixed or placed on a park grounds and/or facilities or athletic field that is designed to have a life expectancy of three ~~years~~ or more years.

~~*Public park* means any land designated, used, obtained, or acquired by the city for use as a public park, recreation area or playground area, and any building or facility thereon, operated by the city as a public park, linear park, recreation area or playground area, whether or not such land, building or facility has been formally dedicated to such purpose.~~

*Park* means any land, building, facility, structure, or portion thereof, owned, leased, controlled or operated by the city for park or recreational purposes, including any natural feature, such as a lake, river, creek or stream, thereon, and any appurtenances thereto. This term specifically excludes an athletic field, the city's golf course and golf course facilities, and the recreation center.

*Park use permit* means a current and valid permit, other than an athletic field use permit, issued in accordance with this chapter for the use of an athletic field, a park or the recreation center.

Permit means a park use permit or an athletic field use permit.

~~Responsible party means the president or vice president of an association.~~

Recognized sports association or RSA means a sports association that is designated, in accordance with this chapter, by the parks board to conduct amateur sporting events for persons under the age of 18 at an athletic field, other than at the city's tennis center.

Recreation center means the city's recreation center, including any areas that are used for recreational purposes, such as a gym or interior room, thereon.

~~Seasonal event means use of park grounds and/or facilities for sporting events for a duration of less than one year, excluding single-use events and tournament events.~~

Season means a period of time beginning no earlier than four weeks prior to the date of a sports association's first officially sanctioned sporting event at an athletic field and no later than the date of the final officially sanctioned sporting event at the athletic field, provided that, such period of time shall not exceed six continuous months.

~~Single-use event means use of park grounds and/or facilities for sporting events for a one-time use.~~

Sports association means a nonprofit organization that exists primarily to operate or conduct amateur sporting events.

Sporting event means an event or a program or a series of events or programs at which an individual or a group of individuals play or compete against one another in a series of sporting events. ~~specific sport.~~

~~Tournament event means use of park grounds and/or facilities for no more than three consecutive days for a singular purpose in which groups and/or~~

Vessel ~~includes~~ means any device ~~of human conveyance on the water, whether~~ propelled by motor, wind or human power and that is used to transport individuals across water. The term includes, but is not limited to, ~~any~~ a boat, a yacht, a cruiser, a canoe, a raft or other watercraft.

Wake means ~~the~~ a track of waves left by a vessel moving through ~~the~~ water in excess of five miles per hour.

## **Sec. 74-2. - Prohibited conduct in athletic fields, parks, and the recreation center.**

~~Within the limits of any public park~~ (a) Except as otherwise provided in this chapter, it shall be unlawful for any person to ~~do any of the acts specified in this section, except as may be otherwise provided.~~ conduct or engage in or cause another person to conduct or engage in any of the following activities within an athletic field, a park or the recreation center, as applicable:

- ~~(1) — It shall be unlawful to hitch~~ (1) Hitch, fasten, lead, ride, drive or let loose any animal or fowl of any kind; ~~;~~ ; provided that this shall not apply to ~~dogs~~ a dog when led by a cord or chain not more than six feet long; ~~;~~

- (2) ~~It shall be unlawful to operate~~Operate or use any motor-~~driven vehicle such as a scooter, a motor-~~assisted scooter, a motorcycle, a go-cart or ~~other similar~~ motor-driven vehicle ~~in and upon the public parks of the city, save~~except in certain areas, roadways, parking areas, drives ~~and, or~~ pathways typically designated or authorized for such purpose-;
- (3) ~~It shall be unlawful to carry~~Carry or discharge fireworks, ~~airguns~~air guns, bows and arrows, slingshots, rockets, torpedoes or any device ~~which would or that~~ could be used to project ~~any~~an object ~~which would or that~~ could create a fire hazard or any hazard or danger to the public, except with the prior written approval of the ~~parks and recreation~~ director-;
- (4) ~~It shall be unlawful to damage~~Damage, cut, break, injure, deface, disturb, displace or remove any natural or manmade properties ~~within a public park~~;
- (5) ~~It shall be unlawful to cut~~Cut or remove any wood, turf, grass, soil, rock, sand, gravel, mulch or fertilizer-; except with the prior written approval of the director;
- (6) ~~Overnight camping is prohibited, unless a permit therefor is obtained. Exceptions may be granted by the director of the parks and recreation department in accordance with this chapter.~~ Camp overnight;
- (7) ~~It shall be unlawful for any person to consume or have in his possession~~Consume or possess any alcoholic beverage. ~~It shall be an affirmative defense to prosecution that such consumption or possession is otherwise allowed by this chapter.~~;
- (8) ~~It shall be unlawful to operate any~~Operate or use a bicycle, ~~or any motor-driven vehicle, such as a~~ scooter, a motor-assisted scooter, a motorcycle, a go-cart or similar motor-driven vehicle, in areas designated for ~~the operation~~riding or driving of such vehicles in ~~disregard for~~ a manner that disregards the safety of persons or property-;
- (9) ~~It shall be unlawful to park vehicles or trailers upon~~Park a vehicle or a trailer on the grass, lawn or anywhere else ~~within a park~~, other than in ~~those areas~~ an area designated for that purpose-;
- (10) ~~It shall be unlawful to park vehicles or trailers anywhere but within and between the visible lines designating~~Park a vehicle or a trailer other than within a single vehicle parking space ~~of any~~in a parking lot ~~of the city parks~~ when ~~such~~ visible parking space lines have been placed upon ~~the~~such parking ~~lots~~lot;
- (11) ~~It shall be unlawful to park any~~Park a vehicle or a trailer in ~~any~~a parking lot ~~or parking area so as to obstruct, block or hinder ingress or egress~~ in a manner that obstructs or hinders access to or from such parking lot ~~or parking area~~;
- (12) ~~It shall be unlawful to distribute~~Distribute, post, place or erect any advertising, handbill, circular, bill, notice, paper or other advertising device-in the recreation center;

- (13) ~~It shall be unlawful to sell~~Sell or offer for sale any merchandise, services, food, non-alcoholic beverages or alcoholic beverages. ~~It shall be an affirmative defense to prosecution that such sale or offer for sale is otherwise allowed by this chapter.~~
- (14) ~~It shall be unlawful to practice~~Practice, carry on, conduct or solicit for any trade, occupation, business or ~~profession unless such person has obtained a permit from the director of the parks and recreation department in accordance with this chapter.~~ profession:
- (15) ~~It shall be unlawful to swim~~Swim, bathe or wade in any water or waterway ~~in any park except in such water or waterway as may be that is~~ designated for such purpose.
- (16) ~~It shall be unlawful to operate~~Operate or use any vessel in any water or waterway except where the water or waterway is specifically designated and posted for a specific purpose.
- (17) ~~No wake zones. a. All waters and waterways in city public parks are hereby designated "Slow, No Wake" zones. It is unlawful for any vessel propelled by a motor to operate such motor within a no wake zone so as to create a wake.~~ Operate the motor of a vessel propelled by a motor in a "Slow, No Wake" zone in a manner that creates a wake;  
~~b. The department may, at its discretion, construct signs or buoys indicating an area as a "Slow, No Wake" zone. No one may be deemed guilty of a violation of subsection (17)a of this section unless there is a buoy in or a sign in or around the premises indicating the area as "Slow, No Wake."~~
- (18) ~~It shall be unlawful to start~~Start or maintain ~~any outdoor~~a fire, except for a cooking ~~fires~~fire, which shall be started ~~and or~~ maintained only in a stove, fireplace, barbecue pit or portable camp stove.
- (19) ~~It shall be unlawful to leave~~Leave a started fire unattended without first completely extinguishing the fire.
- (20) ~~It shall be unlawful to use or be in a public park between the hours of 10:00 p.m. and 6:00 a.m., except that during daylight savings time it shall be unlawful for any person to use or be in a public~~Use or be within a park between the hours of 11:00 p.m. and 6:00 a.m., ~~unless a permit is obtained pursuant to article III of this chapter. Permits for the use of parks during such time period may be obtained from the director. Forms of permits and reasonable regulations concerning their issuance will be determined by the director, subject to approval by the city council.~~ except with the prior written approval of the director;
- (21) Play a sport that could create an unreasonable risk of damage to or destruction of the athletic field, park or recreation center or create a hazard or danger to the public; or

- (22) Conduct or engage in any conduct or activity for which a permit or RSA designation is required without a current and valid permit issued or an RSA designation granted in accordance with this chapter.
- (b) It shall be an affirmative defense to prosecution that a permit has been issued for a prohibited activity under subsection (a) of this section or the activity is otherwise allowed by this chapter.
- (c) The provisions of this section shall not be construed to apply to employees, contractors or agents of the city in the lawful discharge of their respective duties.
- (d) All water and waterways in a park are hereby designated "Slow, No Wake" zones. The director may, at his discretion, place signs or buoys indicating an area as a "Slow, No Wake" zone. It is an affirmative defense to prosecution that no buoy or sign indicates an area is a "Slow, No Wake" zone.

**Sec. 74-3. - Liability.**

The city is not responsible for property that is lost, damaged or misplaced ~~property placed in or on its park grounds and/or facilities in an athletic park, a park or the recreation center.~~

**Sec. 74-4. - Improvements and ~~facility~~ keys.**

- ~~No persons or associations~~Except as otherwise provided in this chapter, a person shall not make ~~any~~an improvement to an athletic field, a park grounds and/or facilities or the recreation center without ~~first receiving prior~~ written authorization from the director. Any improvement made to an athletic field, a park grounds and/or facilities, or the recreation center whether made with or without authorization from the director, shall become the property of the city.
- ~~If facility keys are provided to persons or associations by the department, persons or associations shall ensure all facilities are secure from entry after activity or use. Persons or associations shall return all keys at~~The holder of a permit or an RSA that is provided keys to an athletic field or a park, as applicable, shall ensure that such athletic field or park is secured from entry after use by the permit holder or RSA. All keys shall be returned to the city on or before the earlier of the expiration of the permit. No person or association shall change any or the end of the RSA's season. If the keys provided to a permit holder or an RSA are lost, the permit holder or RSA shall immediately report such loss to the director. A permit holder or an RSA may not change locks to park facilities or make additional copies of keys. Persons or associations assigned keys shall immediately report to the department if keys are lost and also shall immediately report to the department if any locks require to an athletic field or a park without the prior written approval of the director, and shall make requests of any required maintenance of a lock to the director.

**Sec. 74-5. – City events.**

An event sponsored or co-sponsored by the city at an athletic field, a park or the recreation center will be given priority at all times. The city reserves the right to cancel a permit or restrict use of an athletic field, a park or the recreation center at a date or time designated for use by a permit holder or an RSA that conflicts with the date or time of a city sponsored or co-sponsored event. In the event of such cancellation or restriction, the city may refund, to the permit holder,



any permit fees in proportion to the amount of time designated for use, which was not used or, in the case of an RSA, the city may reschedule use of the athletic field at a mutually agreeable date and time.

**ARTICLE II. ADMINISTRATION**

**DIVISION 1. - PARKS BOARD**

**Sec. 74-31. ~~Established;~~ Establishment, membership; and compensation of members.**

There is hereby created and established a parks board in and for the city. The parks board shall consist of an odd number of members that shall be not less than seven members and not more than 13 members as set by the city council. The members of the parks board shall be appointed by the mayor subject to confirmation by the city council. Members of the parks board shall serve without compensation, and each shall be a resident of the city.

**Sec. 74-32. - Terms of members.**

- (a) The terms of the members of the parks board shall be for two years and shall be as follows:
  - (1) The terms of the odd-numbered positions shall be from July 1 of each odd-numbered year until June 30 of the next odd-numbered year.
  - (2) The terms of the even-numbered positions shall be from July 1 of each even-numbered year until June 30 of the next even-numbered year.
- (b) The terms of such members shall continue until their successors have been appointed and confirmed. ~~The~~ A vacancy of a position for any reason shall be filled by appointment as provided in section 74-31, and the duration of such appointment shall be for the remainder of the term of the position.

**Sec. 74-33. ~~Officers;~~ rules of procedure; and records.**

The parks board shall organize by electing from its membership a chair and a vice-chair, each of whom shall hold office for one year or until his successor shall have been elected. Five board members shall constitute a quorum for the transaction of the parks board business. The parks board may adopt its own rules of procedure for the conduct of its business, subject to the approval of such rules by the city council. The parks board shall keep a record of its proceedings and shall file the record with the city secretary.

**Sec. 74-34. - Duties.**

~~The~~ Except as provided in subsection (7) of this section, the parks board shall serve in an advisory capacity to the city council regarding policy matters pertaining to city parks ~~and recreation~~. The parks board shall have the following specific purposes:

- (1) Solicit funds, gifts and bequests for park acquisitions, additions and improvements;

- (2) Review and make advisory recommendations to the city council on proposed park acquisitions, additions and improvements~~-.:~~
- (3) Review and make advisory recommendations on ~~of parks and recreation~~ park and recreation matters submitted by the director ~~of parks and recreation~~ or the city council~~-.:~~
- (4) Promote and stimulate public interest in parks and recreational programs, and assist the director ~~of parks and recreation~~ in solicitation of the cooperation of public and private agencies that may have a direct or indirect involvement in parks and recreation~~-.:~~
- (5) Review and make advisory recommendations on amendments to this chapter to the city council~~on:~~
- (6) Review and make advisory recommendations on adoption of, changes, modifications and amendments to ~~parks and recreation policies of the city~~ rules promulgated by the director in accordance with this chapter; and
- (7) Review and approve or deny applications for RSA designation or applications for renewal of RSA designation, and revoke RSA designations in accordance with this chapter.

**Sec. 74-35. - Board not empowered to obligate city.**

~~The~~ Except as provided in section 74-34(7), the parks board shall have no right, power or authority to obligate or bind the city in any manner whatsoever.

**DIVISION 2. – AUTHORITY OF THE DIRECTOR**

**Sec. 74-51. – Promulgation of written policies and rules and effect of violation.**

The director shall have the authority to promulgate written policies for the general administration of the department and written rules for the orderly management and use of athletic fields, parks, and the recreation center by the public, provided that, such policies and rules do not conflict with applicable city ordinances, resolutions, policies, procedures or regulations and federal and state law. A copy of the rules adopted under this subsection shall be published on the city's website and maintained for public inspection in the offices of the director and the city secretary.

**ARTICLE III. - ~~ADMINISTRATION~~ PERMITS.**

**~~DIVISION 1.--GENERALLY~~**

**~~DIVISION 2.--PERMITS~~ 1 – GENERAL CONDITIONS**

**Sec. 74-~~81.-- Permit required for certain activities.~~ 61. - Conditions or restrictions on the granting of permits or RSA designations.**

~~(a) In addition to any other provision of this chapter that requires the obtaining of a permit prior to engaging in a given activity, no person in a park shall conduct, operate, present, manage~~

~~or take part in any of the following activities unless a permit is obtained prior to the start of the activity, with the exception of activities sponsored or co-sponsored by the city:~~

- ~~(1) Any sporting event exclusively using park grounds and/or facilities, limited to annual events, seasonal events, tournament events, and single-use events.~~
  - ~~(2) Any exhibit, dramatic performance, play, motion picture, radio or television broadcast, fair, circus or musical event or any similar event.~~
  - ~~(3) Any public meeting, assembly, parade, ceremony, address, speech, political meeting or other gathering composed of 50 or more persons.~~
  - ~~(4) Any use of park grounds and/or facilities by an individual or association of persons to the exclusion of others.~~
  - ~~(5) Any use involving amplified sound.~~
- ~~(b) Permit holders shall have exclusive use of the park grounds and/or facilities covered by the permit during the allotted date and time, except as provided in section 74-93.~~

**~~Sec. 74-82. -- Field usage permits.~~**

- ~~(a) This section applies to the issuance of permits for field usage.~~
- ~~(b) All associations desiring to conduct an annual event must make an application and be granted a permit by the director. Associations also must pay a deposit and fee as set forth in a resolution adopted by the city for such event. A permit may be granted for an annual event only to associations that have a membership consisting of a majority of Missouri City residents, that have a board of directors consisting of a majority of Missouri City residents, that have made authorized improvements of at least \$50,000.00 to one or more city parks, and that have an Internal Revenue Service 501(c)(3) designation. Annual event permit holders are required to make an application for all tournament events and receive a permit from the director. Annual event permit holders perform field, restroom, and concession maintenance, as may be set forth in the permit, and are responsible for their own supplies, amenities, and facilities. Annual event permit holders will receive priority in field assignment.~~
- ~~(c) All persons or associations desiring to conduct a seasonal event must make an application and be granted a permit by the director. Persons or associations also must pay a deposit and fee as set forth in a resolution adopted by the city for such event. The department will provide routine maintenance, excluding field preparation, to park grounds and/or facilities for seasonal events. Associations that have a membership consisting of a majority of Missouri City residents will be given priority field assignment over associations that do not have a membership consisting of a majority of Missouri City residents.~~
- ~~(d) All persons or associations desiring to conduct a tournament event must make an application and be granted a permit by the director. Annual event permit holders with an Internal Revenue Service 501(c)(3) designation and which retain all tournament proceeds related to the tournament for which application is made shall pay a not-for-profit tournament event deposit and fee as set forth in a resolution adopted by the city, but in no case may these associations conduct more than eight tournaments during their permit period. Seasonal event permit holders with an Internal Revenue Service 501(c)(3) designation and which retain all tournament proceeds related to the tournament for which application is made shall pay a not-for-profit tournament event deposit and fee as set forth in a resolution adopted by the city, but in no case may these associations conduct more than eight tournaments in a calendar year. Associations without an annual or seasonal event permit,~~

~~with an Internal Revenue Service 501(c)(3) designation and which retain all tournament proceeds related to the tournament for which application is made shall pay a not-for-profit tournament event deposit and fee as set forth in a resolution adopted by the city, but in no case may these associations conduct more than four tournaments in a calendar year. All other persons or associations making an application for a tournament event shall pay a for-profit tournament event deposit and fee as set forth in a resolution adopted by the city. There shall be no more than two for-profit tournament events per calendar year per park.~~

- ~~(e) All persons or associations desiring to conduct a single-use event must make an application and be granted a permit by the director. Persons or associations also must pay a deposit and fee as set forth in a resolution adopted by the city for such event.~~
- ~~(f) For purposes of subsections (b) and (c) of this section, "majority" means 51 percent or greater. For purposes of subsections (b) and (c) of this section, "Missouri City residents" means those persons residing within the territorial limits of the city, plus, for youth sports associations utilizing Sta-Mo Park, those persons residing **within the territorial limits** of the City of Stafford.~~

**Sec. 74-83. -- Park permit.**

- ~~(a) The director is authorized to grant a park permit allowing the sale of merchandise, services, food, non-alcoholic beverages or alcoholic beverages, or the consumption or possession of alcoholic beverages in a public park. The application for such a park permit shall comply with the provisions of section 74-84 and such other reasonable rules and regulations prescribed by the director. The provisions of sections 74-85 through 74-93 shall apply to the permit and the permitting process. In no event shall a permit be granted for the sale, consumption or possession of alcoholic beverages during or associated with a youth sporting event in a public park.~~
- ~~(b) The provisions of chapter 6 shall apply to the **sale, consumption or possession of alcoholic beverages.**~~
- ~~(c) The **provisions of article II of chapter 18** shall apply to the sale of food and non-alcoholic beverages.~~
- ~~(d) The sale of merchandise, services, food, non-alcoholic beverages or alcoholic beverages, and the consumption or possession of alcoholic beverages at city events or events co-sponsored by the city are exempt from the provisions of subsection (a) of this section.~~
- ~~(e) The sale of services by a person authorized by the city to provide such services pursuant to a recreational instructor **contract is exempt from the provisions of subsection (a)** of this section.~~

**Sec. 74-84. -- Application.**

- ~~(a) A permit application for an annual event shall be filed with the director by a responsible party not less than 30 days and no more than 90 days before the first date of any proposed activity or use of the fall season. A permit application for a seasonal event and tournament event shall be filed with the director not less than 30 days and not more than 90 days before the date of the proposed activity or use. A permit application for a single-use event shall be filed with the director not less than ten days and not more than 30 days before the date of the proposed activity or use. All other applicants seeking the issuance of a permit to carry on an activity in or use of park grounds and/or facilities shall file an application with the director not less than ten days and not more than 365 days before the date of the proposed activity or use. The director may allow for different permit application filing~~

~~deadlines based upon special circumstances. Any applicable fee as set forth in a resolution adopted by the city shall be paid at a time designated by the director. The applicant shall provide at a minimum:~~

- ~~(1) The name, address and telephone number of the applicant.~~
  - ~~(2) For associations, the names, addresses, telephone numbers, and email addresses of the association and its board of directors and officers.~~
  - ~~(3) The exact nature of the activity or use for which the permit is being sought.~~
  - ~~(4) The date and time for which the permit is desired.~~
  - ~~(5) The park and the park grounds and/or facilities desired to be used to carry out the proposed activity or use.~~
  - ~~(6) An estimate of the anticipated attendance.~~
  - ~~(7) For annual event applicants, seasonal event applicants, and tournament event applicants, the most current financial statement, a list of league affiliations, the by-laws, the most current roster with names of players, the designation as to the city in which each player resides, all schedules of practices and games, and the schedule of opening day ceremonies, if applicable.~~
  - ~~(8) For tournament event applicants applying to conduct a non-profit tournament event and for annual event applicants, the association's Internal Revenue Service 501(c)(3) designation.~~
  - ~~(9) For annual event applicants, seasonal event applicants, or tournament event applicants, an acknowledgement that background checks have been conducted on all coaches and managers.~~
  - ~~(10) For applicants seeking a permit for the sale of merchandise, services, food or non-alcoholic beverages during and associated with an event hosted by an annual, seasonal or tournament permit holder, written permission from an authorized representative of such annual, seasonal or tournament permit holder.~~
  - ~~(11) Any other information that the director finds to be reasonably necessary.~~
- ~~(b) Updated rosters are to be provided to the director at times specified by director. All rosters are subject to periodic audits by the director. Annual and seasonal event permit holders shall report changes in rosters to the director and pay for any roster additions as set forth in a resolution adopted by the city for such event.~~

**~~Sec. 74-85. -- Criteria for granting.~~**

~~The director shall consider the application for a permit under this division and grant the permit if it is found that the activity or use will satisfy the following criteria:~~

- ~~(1) The proposed activity or use of the park will not unreasonably interfere with or detract from the general public's use and enjoyment of the park;~~
- ~~(2) The proposed activity or use of the park will not create an unreasonable risk of damage or destruction of public park property;~~
- ~~(3) The proposed activity or use of the park will not create an unreasonable risk of injury to the participants, to any other person, or to the public generally;~~
- ~~(4) Adequate provision has been made for supervision and security of the activity or use of the park;~~

- ~~(5) The facilities desired have not been reserved for another activity or use at the date and time requested in the application;~~
- ~~(6) The application does not contain any false or misleading information, and no required information is omitted; and~~
- ~~(7) The activity or use will not violate any federal, state or local law.~~

**Sec. 74-86. -- Conditions.**

The director or the parks board, as applicable, may impose reasonable conditions or restrictions on the issuance of a permit or granting of ~~a permit under this division~~ RSA designation, including, but not limited to, anyone or more of the following:

- (1) Restrictions on fires, fireworks, amplified sound, ~~dancing, sports~~ type of sport, use of animals, equipment or vehicles; the number of persons to be present; the location of any bandstand or stage; or such other restrictions as may be reasonable considering the intended activity or use, its effect on the general public's use and enjoyment of ~~park property~~ the athletic field, park, or recreation center, and the possible injury or damage to persons or property;
- (2) A requirement that the applicant pay a fee as set forth in a resolution adopted by the city council to defray the cost of furnishing security ~~forces~~ by the city at the proposed ~~activity or use as set forth in a resolution adopted by the city. The content of the activity or use will not be a factor in determining the fee.~~ activity;
- (3) A requirement that the applicant ~~post a reasonable deposit of security~~ pay a fee as set forth in a resolution adopted by the city council as a security deposit for the repair of any damage to ~~park~~ city property or the cost of cleanup, or both;
- (4) A requirement that the applicant furnish additional sanitary and refuse facilities that might be reasonably necessary ~~based on~~ considering the intended activity ~~or use~~ for which the permit or RSA designation is being sought. ~~Permittees are responsible for removing trash and litter generated by their activity in or use of park grounds and/or facilities.~~
- (5) A requirement that the applicant for a park use permit provide proof of a comprehensive general liability insurance policy issued by an insurance company authorized to do business in the ~~state. The~~ State of Texas; provided that, the city shall be named as an additional insured on ~~the~~ such policy. ~~The and the~~ policy limits of said insurance shall conform to those required by the city manager; or ~~his designee. The city may lower or waive the liability insurance limits.~~
- (6) A requirement that the applicant ~~agrees~~ agree to indemnify and hold harmless the city and its officers, agents and employees from any and all actions, claims, costs, damages and expenses, including, but not limited to, attorney's fees and court costs, arising out of the use of the athletic field, park grounds and/or facilities or recreation center by the applicant. ~~Furthermore;~~ provided that such indemnification shall apply with respect to all acts or omissions of the applicant and the applicant's invitees, licensees, relatives, friends and their respective invitees, licensees, relatives, and friends associated with the use of such athletic field, park grounds and/or facilities, or recreation center.

**Sec. 74-87. -- Notice of decision; appeals.**

~~Within seven days after submission of an application for a permit under this division, the director shall inform an applicant in writing of his approval or the reasons for denying a permit and of any conditions attached to the issuance of a permit. Any aggrieved person shall have the right to appeal in writing within six days to the city council, which shall consider the appeal.~~

**Sec. 74-88. -- Transfer.**

~~Permits issued under this division are not to be used, assigned or transferred to other persons or associations without the written consent of the director.~~

**Sec. 74-89. -- Compliance with applicable regulations.**

~~A permittee under this division shall be bound by all applicable rules, regulations, resolutions, ordinances and laws.~~

**Sec. 74-90. -- Additional fees.**

~~Department may assess~~ 62. -- Requirements for permit holders and RSAs.

The holder of a permit or an RSA shall:

- (1) Be bound by the requirements of this chapter, all applicable city ordinances, resolutions, policies, procedures and rules, and applicable federal and state laws;
- (2) Be ~~liable for any loss or damage to property or injury or death to persons related to or arising out of~~ the activity for which a permit is issued or RSA designation is granted;
- (3) Not transfer or assign use of an athletic field, a park or the recreation center, as applicable, to another person without the prior written consent of the director;
- (4) Except as otherwise provided in this chapter, have exclusive use of the athletic field, park, or recreation center, as applicable, during the dates and times set forth in the permit or RSA's approved schedule of sporting events; provided that, the director reserves the right to issue a permit or authorize the use of an athletic field, a park, or the recreation center to other persons when such athletic field, park or the recreation center has not been reserved or assigned for use on the dates and times set forth in a permit or an RSA's approved schedule of sporting events;
- (5) Be responsible for the removal of ~~trash and litter generated by~~ the use or activity for which a permit is issued or RSA designation is granted; and
- (6) Be assessed additional fees ~~to permittee~~ as set forth in a resolution adopted by the city for the maintenance, cleaning, and other similar services ~~to park grounds and/or facilities arising from park activity or use.~~ arising from the use or activity for which a permit is issued or RSA designation is granted.

**Sec. 74-63. - Receipt and review of applications for permits.**

The director shall cause all completed applications received pursuant to this article to be immediately time stamped upon receipt by the director. Except for applications filed pursuant to

division 3, relating to RSA designations, applications filed pursuant to this article shall be reviewed on a first come, first serve basis; provided that, if two or more applications for a permit are received at the same time, the precedence of approval of such applications shall be determined by an impartial means of chance.

## **DIVISION 2. – PARK USE PERMITS**

### **Sec. 74-81. – Park use permits required for certain activities.**

- (a) A park use permit is required before a person may engage in or conduct the following activities in an athletic field, park or the recreation center:
- (1) An activity, other than a sporting event at an athletic field, that temporarily excludes others from using an athletic field, a park or the recreation center for the duration of the activity;
  - (2) An exhibit, dramatic performance, motion picture, radio or television broadcast or recording, fair, festival, circus, musical event or similar event;
  - (3) A group activity, organized event or gathering comprising of 50 or more persons, except for a sporting event at an athletic field;
  - (4) The use of amplified sound equipment;
  - (5) The sale or offer for sale of merchandise, services, food or non-alcoholic beverages;
  - (6) The sale, offer for sale, consumption or possession of alcoholic beverages; except that, a park use permit shall not be granted for the sale, offer for sale, consumption or possession of alcoholic beverages during or associated with a sporting event involving individuals under the age of 18 at an athletic field;
  - (7) Camping overnight;
  - (8) Practicing or conducting of, carrying on, or soliciting for any trade or occupation, business or profession; and
  - (9) Being in or using the park between the hours of 11:01 p.m. and 5:59 a.m.
- (b) A park use permit holder shall comply with the provisions of article II of chapter 18 relating to the sale of food and non-alcoholic beverages.
- (c) A park use permit holder shall comply with the provisions of chapter 6 of this code relating to the sale, offer for sale, consumption or possession of alcoholic beverages.
- (d) Events sponsored or co-sponsored by the city are exempt from the provisions of subsection (a) of this section.



(e) The sale or offer for sale of services by a person authorized by the city to provide such services pursuant to **contract is exempt from the provisions of subsection (a)(5) of this section.**

**Sec. 74-82. – Applications for park use permits.**

(a) A person seeking a park use permit shall file an application for a park use permit with the director on an application form provided by the director at least 24 hours before the start time of the proposed activity. The application shall include the following information and shall be accompanied by the payment of a fee in the amount specified in a resolution adopted by the city council establishing a schedule of fees:

- (1) The name, address, telephone number, and email address of the applicant;
- (2) **The exact nature of the activity** for which a permit is sought;
- (3) The date and time of the activity for which a permit is sought;
- (4) The name of the athletic field, park or recreation center or area thereof sought to **carry out the proposed activity**;
- (5) The number of persons the applicant estimates will attend or participate in the activity;
- (6) The type of amplified sound equipment to be used, if any;
- (7) The type of special effects or features to be used, if any, including, but not limited to, a band, a moonwalk, a petting zoo, or a portable stage;
- (8) For an applicant seeking a park use permit for the sale or offer for sale of merchandise, services, food, non-alcoholic beverages or alcoholic beverages, as applicable, during or associated with a sporting event to be conducted at an athletic field by the holder of an athletic field use permit or an RSA, a written authorization from such athletic field use permit holder or RSA, or an authorized representative of said athletic field use permit holder or RSA, to sell merchandise, services, food, non-alcoholic beverages or alcoholic beverages, as applicable, at such sporting event;
- (9) Whether a fee, such as an admission fee or parking fee, will be charged or anything of value will be required in order to attend the proposed activity; and
- (10) Any other information that may be requested by the director to fully evaluate and review the application.

(b) The director may waive the deadline for filing an application for a park use permit, provided that, a waiver serves a public interest or an emergency exists and the application otherwise meets the requirements of this chapter.

**Sec. 74-83. – Approval or denial of applications for park use permits.**

The director will grant a park use permit, and provide, in writing, any conditions or restrictions attached to the issuance of the permit, unless the director determines that the application meets one or more of the following conditions:

- (1) The application or activity does not comply with the requirements of this chapter, applicable city ordinances, resolutions, policies, procedures, regulations or rules or federal and state law;
- (2) The proposed activity will **unreasonably interfere with or detract from the general public's use and enjoyment of the requested athletic field, park or recreation center;**
- (3) **The proposed activity will create an unreasonable risk of damage to or destruction of the requested athletic field, park or recreation center;**
- (4) The proposed activity will **create an unreasonable risk of injury to participants or to the public;**
- (5) Inadequate provision has been made for the **supervision and security of the activity;**
- (6) A park use permit has otherwise been issued for use of the athletic field, park or recreation center on the date and time requested in the application;
- (7) The application contains false or misleading information or required information is omitted;
- (8) The applicant refuses to comply with the conditions or restrictions imposed by the director in accordance with section 74-61;
- (9) The applicant charges an admission fee, parking fee or requires anything of value in order to attend the proposed activity, other than a fee to participate in the proposed activity; or
- (10) The proposed activity is similar to an activity that is being conduct, sponsored or co-sponsored or will be conducted, sponsored or co-sponsored by the city.

**Sec. 74-84. – Modification or revocation of park use permits.**

The director may modify or revoke a park use permit issued pursuant to this division if one or more of the following conditions are met:

- (1) Failure to comply with the conditions or restrictions attached to the issuance of the park use permit;
- (2) Failure to comply with the requirements of section 74-62; or
- (3) One or more of the conditions provided in section 74-83 are met.

**Sec. 74-85. – Notice of decisions and appeals.**

- (a) The director will provide notice to the applicant or holder of a park use permit, as applicable, in writing, of the denial, modification or revocation of a park use permit and shall include the reasons for such denial, modification or revocation.
- (b) A person may appeal the director's decision to deny, modify or revoke a park use permit, or any conditions or restrictions attached to the issuance of a park use permit, to the city council by providing a written notice of appeal to the city secretary within 10 days of the date of the notice of such decision. A decision by the city council shall be final.

### DIVISION 3. – RECOGNIZED SPORTS ASSOCIATIONS

#### **Sec. 74-91. ~~–Liability for damage.~~ – Eligibility for RSA designation.**

~~The person or association to whom a permit is issued under this division shall be liable for any loss or damage to property or injury or death to persons whatsoever related to or arising out of activity in or use of park grounds and/or facilities.~~

- (a) A sports association shall meet the following requirements to be deemed eligible to receive an RSA designation:
  - (1) The sports association must be a nonprofit organization that is exempt from state and federal taxation, and in good standing with the state of Texas and the Internal Revenue Service;
  - (2) At least twenty-five percent (25%) or three members of the sports associations' board of directors, whichever number is greater, must reside within the territorial limits of the city as determined by the most-recently approved city tax roll of real property records;
  - (3) The sports association must conduct at least one board of directors' meeting per year as evidenced by the association's board meeting minutes;
  - (4) At least 51 percent (51%) or more of the participants in the sports association's proposed sporting event at the athletic field(s) for which RSA designation is sought must reside within the territorial limits of the city as determined by the most-recently approved city tax roll of real property records; except that, for a sports association seeking RSA designation for use of the Sta-Mo Park, the requirement that at least 51 percent (51%) or more of the participants of the sports association must be city residents may be met by individuals who reside within the territorial limits of the city and the City of Stafford;
  - (5) The sports association must designate at least two (2) employees or volunteers of the association who will be present at and during each of the sports associations' sporting events at the athletic field(s) for which RSA designation is sought; provided that, such employees or volunteers must be at least 21 years of age and have completed training in cardiopulmonary resuscitation (CPR) and basic first aid;
  - (6) Each coach or trainer who will participate in the sports association's proposed sporting event at the athletic field for which RSA designation is sought, must complete training in concussion education;

(7) The sports association must have comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence with the city named as an additional insured;

(8) The sports association must have adopted a written criminal background check policy or procedure that is used by the sports association to determine an individual's eligibility to work for or volunteer with the sports association in sporting events involving individuals who are under the age of 18; and

(9) A member of the sports associations' board of directors must attest that each employee or volunteer that will be involved in the sports associations' sporting events at the athletic field for which RSA designation is sought has undergone and passed a criminal background check in accordance with the sports associations' criminal background check policy or procedure.

(b) A sports association that is granted RSA designation shall maintain the results of the criminal background checks required under subsection (a)(9) of this section for a period of three (3) years from the date the sports association submits an application for RSA designation or an application for renewal of RSA designation, as applicable, and such results shall be available for review upon the city's request.

**Sec. 74-92. ~~--Revocation--~~ Applications for RSA designation or for renewal of RSA designation.**

~~The director shall have the authority to revoke a permit issued under this division upon a finding of violation of any rule, ordinance, state or federal law, or upon the violation of any condition or restriction under which the permit was issued.~~

(a) At least once a year, the director will cause to be published, on the city's website, the names and locations of and the time periods that athletic fields will be available for use by RSAs for that year, the date that the city will begin and stop accepting applications for RSA designation and applications for renewal of RSA designation, and how to obtain information to submit such applications to the city.

(b) A sports association seeking RSA designation or renewal of RSA designation shall submit, in writing, an application for RSA designation or an application for renewal of RSA designation, as applicable, to the director on a form provided by the director for that purpose on or before the date designated by the director as the last date for accepting applications pursuant to subsection (a) of this section. The application shall include the following information and shall be accompanied by the payment of a fee in the amount specified in a resolution adopted by the city council establishing a schedule of fees:

(1) The name, address, telephone number, and e-mail address of the applicant;

(2) The name, address, telephone number, and email address of the person responsible for the operation or supervision of the applicant's proposed sporting event at the athletic field(s) for which RSA designation is sought;

(3) The name and address of the athletic field(s) for which RSA designation is sought;

- (4) The type of sport that the applicant intends to play on the athletic field(s) for which RSA designation is sought;
- (5) Proof of the applicant's status as a nonprofit organization and that the applicant is in good standing with the state of Texas and with the Internal Revenue Service as a tax exempt organization; including, but not limited to, a certificate of incorporation as a nonprofit organization and an IRS determination letter;
- (6) A roster of the names and residential addresses, including the street, city, and zip code, of each individual who will participate in the applicant's proposed sporting event at the athletic field(s) for which RSA designation is sought, and if such roster is not available, the names and addresses of each person who participated in the applicant's most recent sporting event; provided that, if granted RSA designation, the applicant shall provide to the city any changes to the roster before the first day the RSA proposes to use the assigned athletic field(s);
- (7) For an applicant who is seeking renewal of RSA designation, in addition to the information required under subsection (b)(6) of this section, a roster of the names and residential addresses, including the street, city, and zip code, of each individual who participated in the applicant's most recent sporting event season conducted at the athletic field(s) for which RSA designation was granted;
- (8) A schedule of the type of sporting events, including, but not limited to, tryouts, practices, leagues, games, tournaments, and opening and closing day ceremonies that will be conducted at the athletic field(s) for which RSA designation is sought, the dates and times that such sporting events will be conducted, and alternative dates and times that may be used by the applicant to conduct such sporting events in the event that the athletic field(s) for which RSA designation is sought is not available for use due to circumstances outside the control of the applicant; provided that, the schedule must incorporate periods of non-use of the athletic field(s) to allow turf to rest and recover and does not request year-round use of such athletic field(s);
- (9) Documentation that demonstrates that the applicant is eligible for RSA designation pursuant to subsections 74-91(a)(2) (relating to board members), (3) (relating to board of directors' meeting), (5) (relating to volunteers), (6) (relating to concussion education), (7) (relating to insurance), (8) (relating to criminal background check policy), and (9) (relating to criminal background checks);
- (10) Documentation that supports the applicant's historical ties to the athletic field(s) for which RSA designation is sought, including, but not limited to, historical data that shows the applicant's on-going, recurrent or established use of such athletic field and the dates and times that the applicant has held sporting events at such athletic field(s); and
- (11) Any other information that may be requested by the director to fully evaluate and review an application.

**Sec. 74-93. ~~Conflicts with city programs.~~ Review of applications for and granting of RSA designation.**

~~Events sponsored or co-sponsored by the city will be given priority at all times, and the city reserves the right to cancel any permit that may conflict with a city sponsored or co-sponsored event.~~

- (a) Upon the expiration of the time period for filing an application pursuant to subsection 74-92(a), the director will forward, to the parks board, each complete application of eligible sports associations, and all accompanying documents received by the director pursuant to subsection 74-92(b), with a recommendation to either approve or deny such application and the proposed schedule of sporting events.
- (b) The parks board will approve applications for RSA designation and schedules of sporting events, and provide, in writing, any conditions or restrictions attached to the grant of RSA designation, unless the parks board determines one or more of the following conditions are met:
- (1) The application contains false or misleading information, or required information is omitted;
  - (2) The applicant refuses to comply with the conditions or restrictions attached to the grant of RSA designation; or
  - (3) The application or proposed sporting event does not comply with the requirements of this chapter, applicable city ordinances, resolutions, policies, procedures, regulations or rules or federal and state law;
- (c) The parks board will approve applications for renewal of RSA designation and schedules of sporting events, and provide, in writing, any conditions or restrictions attached to the grant of RSA designation, unless the parks board determines that one or more of the following conditions are met:
- (1) One or more of the conditions provided in subsection (b) of this section are met;
  - (2) Failure to maintain the participation rate required under section 74-91(a)(4) during the applicant's most recent RSA designation;
  - (3) Failure to maintain the assigned athletic field(s) as required under section 74-95(b) during the applicant's most recent RSA designation;
  - (4) Failure to make any payment required pursuant to this chapter or applicable city ordinance, resolution, regulation, policy or rule during the applicant's most recent RSA designation;
  - (5) Failure to adhere to the approved sporting event schedule during the applicant's most recent RSA designation; or
  - (6) Failure to maintain the required insurance during the applicant's most recent RSA designation.

- (d) RSA designations will be granted until all eligible athletic fields have been assigned. Once all eligible athletic fields have been assigned, no more RSA designations will be granted until the next application cycle, and then, only if an athletic field is available for use.
- (e) In the event that two or more sports associations meet the conditions for RSA designation, and such sports associations have requested use of the same athletic field on the same dates and times, the order of precedence, with the first paragraph below taking the highest precedence, for granting RSA designation for use of said athletic field shall be as follows:
- (1) The sports association that most recently held RSA designation for use of said athletic field(s) and is seeking renewal of RSA designation for said athletic field(s):
  - (2) In the event that no sports association has priority pursuant to subsection (e)(1) of this section, the sports association having the longer duration of historical ties to said athletic field(s), as determined by an established, on-going or recurrent use of the athletic field:
  - (3) In the event that no sports association has priority pursuant to subsections (e)(1) and (e)(2) of this section, the sports association with the greater number of participants who reside within the territorial limits of the city; and
  - (4) If said athletic field(s) is new, the sports association with the greater number of participants who reside within the territorial limits of the city.

**Sec. 74-94. - Revocation of RSA designation.**

The parks board may revoke an RSA designation granted pursuant to this division if the RSA fails to maintain the insurance required under this article.

**Sec. 74-95. – Fees for the use of athletic fields by RSAs.**

An RSA shall pay fees for the use of the athletic field(s) assigned to the RSA in the amount specified in a resolution adopted by the city council establishing a schedule of fees.

**Sec. 74-96. – Maintenance of athletic fields.**

- (a) The city will provide routine maintenance, excluding field preparation, to athletic fields.
- (b) In consideration of receiving priority and exclusive use of an athletic field(s) during the dates and times set forth in the RSA's approved schedule of sporting events, the RSA shall be responsible for providing its own supplies, maintaining the restrooms and concessions during the dates and times set forth in the approved schedule of sporting events, and maintaining the fields of the assigned athletic field(s) during and after the RSA's season in accordance with the rules for field maintenance of athletic fields promulgated by the director in accordance with this chapter.

**Sec. 74-97. – Appeals.**

A person may appeal the park board's decision to deny an application for RSA designation, an application for renewal of RSA designation or to revoke an RSA designation in accordance with subsection 74-85(b). A decision by the city council shall be final.

**DIVISION 4. – ATHLETIC FIELD USE PERMITS**

**Sec. 74-101. – Applications for athletic field use permits.**

A person seeking an athletic field use permit shall file an application for an athletic field use permit with the director, on an application form provided by the director, at least 24 hours before the date of the proposed sporting event. The application shall include the following information and shall be accompanied by the payment of a fee in the amount specified in a resolution adopted by city council establishing a schedule of fees:

- (1) The name, address, telephone number, and e-mail address of the applicant;
- (2) The name, address, telephone number, and email address of the person responsible for the operation or supervision of the applicant's proposed sporting event at the requested athletic field(s);
- (3) The name and address of the requested athletic field(s);
- (4) The type of sport that the applicant intends to play on the requested athletic field(s);
- (5) The date and time the applicant proposes to use the requested athletic field;
- (6) The number of persons the applicant expects to attend the sporting event at the requested athletic field;
- (7) The information required under subsections 74-91(a)(5) (relating to volunteers) and (7) (relating to insurance); and
- (8) Any other information that may be requested by the director to fully evaluate and review the application.

**Sec. 74-102. – Approval or denial of applications for athletic field use permits.**

The director will grant an athletic field use permit, and provide, in writing, any conditions or restrictions attached to the issuance of the athletic field use permit, unless the director determines that the application meets one or more of the conditions provided in section 74-83.

**Sec. 74-103. – Modification or revocation of athletic field use permits.**

The director may modify or revoke an athletic field use permit issued pursuant to this division if one or more of the conditions provided in section 74-84 is met.

**Sec. 74-104. – Notice of decisions and appeals.**

- (a) The director will provide notice of the denial, modification or revocation of an athletic field use permit in accordance with subsection 74-85(a).
- (b) A person may appeal the director's decision to deny, modify, or revoke an athletic field use permit in accordance with subsection 74-85(b). A decision by the city council shall be final.



....

**ARTICLE VI. - GOLF COURSES AND GOLF COURSE FACILITIES.**

....

**Sec. 74-182. – Prohibited conduct on golf courses; exception.**

(a) *Prohibited conduct.* ~~In addition to activities prohibited in parks pursuant to this chapter and except~~ Except as otherwise provided in this article, the following activities are prohibited:

(1) It shall be unlawful for an individual to use the Quail Valley La Quinta Golf Course or the Quail Valley El Dorado Golf Course including accompanying cart trails of either course unless such individual registers with, and receives authorization from, the pro shop to use the golf course, except as otherwise set forth in this section.

(2) It shall be unlawful for an individual to use the Quail Valley La Quinta Golf Course or the Quail Valley El Dorado Golf Course, including accompanying cart trails of either course with a bicycle, skates, a skate board or any similar type of wheeled vehicle, toy or recreational device.

(3) It shall be unlawful for an individual to conduct or engage in conduct prohibited by section 74-2 at the Quail Valley La Quinta Golf Course or the Quail Valley El Dorado Golf Course, including accompanying cart trails of either course.

....

(c) Affirmative defense. It shall be an affirmative defense to prosecution under subsection 74-182(a) that a person has prior written authorization from the appropriate city representative to conduct or engage in such activity.

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## CITY COUNCIL AGENDA ITEM COVER MEMO

August 7, 2017

**To:** Mayor and City Council  
**Agenda Item:** 2(b) Chapter 46 Infrastructure Standards & Wireless Services Design Manual  
**Submitted by:** Shashi Kumar, P.E. Director of Public Works, City Engineer  
Otis Spriggs, Director of Development Services  
E. Joyce Iyamu, City Attorney

### SYNOPSIS

This item relates to an ordinance amending Chapter 46, Infrastructure Standards, of the Missouri City Code, and adopting a design manual to provide for the implementation of Senate Bill 1004 of the 85th Regular Session of the Texas Legislature ("S.B. 1004"). S.B. 1004 becomes effective on September 1, 2017.

### STRATEGIC PLAN 2019 GOALS ADDRESSED

- Create a Great Place to Live
- Quality Development Through Buildout

### BACKGROUND

S.B. 1004 limits the City's ability to regulate the placement of certain wireless facilities in the City's right-of-way ("ROW"). S.B. 1004:

- Sets forth certain design requirements for network nodes in municipal right-of-ways; and
- Provides that zoning is not required for the construction, modification, maintenance, operation, and removal of a network node or node support pole in a ROW; modification or replacement of a utility pole or a node support pole; and collocation on a pole, subject to an agreement that is consistent S.B. 1004.

Pursuant to S.B. 1004, network providers are still subject to applicable codes (i.e. building and electrical) and public right-of-way management ordinances.

The proposed ordinance revises certain provisions for the placement of all facilities in the right-of-way and adopts standards for the placement of certain wireless facilities in the City ROW, to the extent those standards are not in conflict with state law. New requirements include an indemnification provision, a provision requiring removal in instances in which facilities have been placed in locations that are not the correct permitted locations, and a requirement that all right-of-way users submit as-built construction plans to the city after installation so that the city can safely manage the right-of-way.

S.B. 1004 allows the City to exercise some discretion in the installation of node support poles in the ROW in (1) areas designated as City parks and (2) adjacent to streets or thoroughfares not more than 50 feet wide and adjacent to single-family residential or other land designated for residential uses. The proposed ordinance amending Chapter 46 designates land zoned "CF community facilities" as a public park for the purposes of recreational activity.

Additionally, applicants must obtain prior approval to collocate or locate in areas zoned or designated as historic districts or design districts if the district has decorative poles. The proposed ordinance amending Chapter 46 designates land subject to architectural design standards and land subject to PD zoning with unique architectural design standards as design districts. The bill allows the City to require reasonable design or concealment measures for disguising poles in historic districts or design districts with decorative poles.

Additionally, the bill allows cities to adopt design standards. The proposed design standards provide the following preferences for locating nodes, with item 1 being the most preferred location for network nodes:

1. Areas zoned to allow I industrial uses and BP business park uses, as such uses are described in the City's zoning regulations, if not adjacent to a municipal park, residential development, historic district, or design district;
2. Highway rights-of-way areas not adjacent to a municipal park, residential development, historic district or design district; and
3. Areas zoned to allow LC-2 local retail, LC-3 retail, and LC-4 retail uses, as such uses are described in the City's zoning regulations, if not adjacent to a municipal park, residential development, historic district or design district.

Staff will present a related general agreement for the collocation of wireless equipment on City service poles in the ROW and a schedule of fees at the August 21, 2017 city council meeting.

**BUDGET ANALYSIS**

**Purchasing Review:** N/A  
**Financial/Budget Review:** N/A

**SUPPORTING MATERIALS**

1. S.B. 1004
2. Depiction of network nodes
3. Ordinance (see regular meeting packet item 10(b))

**STAFF'S RECOMMENDATION**

Consider adopting the ordinance on the first of two readings during the regular meeting.

AN ACT

relating to the deployment of network nodes in public right-of-way;  
authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Local Government Code, is amended by adding Chapter 284 to read as follows:

CHAPTER 284. DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 284.001. FINDINGS AND POLICY. (a) The legislature finds that:

(1) network nodes are instrumental to increasing access to advanced technology and information for the citizens of this state and thereby further an important public policy of having reliable wireless networks and services;

(2) this state has delegated to each municipality the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public, subject to state law;

(3) network nodes often may be deployed most effectively in the public right-of-way;

(4) network providers' access to the public right-of-way and the ability to attach network nodes to poles and structures in the public right-of-way allow network providers to densify their networks and provide next-generation services;

(5) expeditious processes and reasonable and

1 nondiscriminatory terms, conditions, and compensation for use of  
2 the public right-of-way for network node deployments are essential  
3 to state-of-the-art wireless services and thereby further an  
4 important public policy of having reliable wireless networks and  
5 services;

6 (6) network nodes help ensure that this state remains  
7 competitive in the global economy;

8 (7) the timely permitting of network nodes in the  
9 public right-of-way is a matter of statewide concern and interest;

10 (8) requirements of this chapter regarding fees,  
11 charges, rates, and public right-of-way management, when  
12 considered with fees charged to other public right-of-way users  
13 under this code, are fair and reasonable and in compliance with 47  
14 U.S.C. Section 253;

15 (9) to the extent this state has delegated its  
16 fiduciary responsibility to municipalities as managers of a  
17 valuable public asset, the public right-of-way, this state is  
18 acting in its role as a landowner in balancing the needs of the  
19 public and the needs of the network providers by allowing access to  
20 the public right-of-way to place network nodes in the public  
21 right-of-way strictly within the terms of this chapter; and

22 (10) as to each municipality, including home-rule  
23 municipalities, this state has determined that it is reasonable and  
24 necessary to allow access to the public right-of-way for the  
25 purposes of deploying network nodes to protect and safeguard the  
26 health, safety, and welfare of the public as provided by this  
27 chapter.

1       (b) In order to safeguard the health, safety, and welfare of  
2 the public, it is the policy of this state to promote the adoption  
3 of and encourage competition in the provision of wireless services  
4 by reducing the barriers to entry for providers of services so that  
5 the number and types of services offered by providers continue to  
6 increase through competition.

7       (c) It is the policy of this state, subject to state law and  
8 strictly within the requirements and limitations prescribed by this  
9 chapter, that municipalities:

10           (1) retain the authority to manage the public  
11 right-of-way to ensure the health, safety, and welfare of the  
12 public; and

13           (2) receive from network providers fair and reasonable  
14 compensation for use of the public right-of-way and for collocation  
15 on poles.

16       Sec. 284.002. DEFINITIONS. In this chapter:

17           (1) "Antenna" means communications equipment that  
18 transmits or receives electromagnetic radio frequency signals used  
19 in the provision of wireless services.

20           (2) "Applicable codes" means:

21                   (A) uniform building, fire, electrical,  
22 plumbing, or mechanical codes adopted by a recognized national code  
23 organization; and

24                   (B) local amendments to those codes to the extent  
25 not inconsistent with this chapter.

26           (3) "Collocate" and "collocation" mean the  
27 installation, mounting, maintenance, modification, operation, or

1 replacement of network nodes in a public right-of-way on or  
2 adjacent to a pole.

3 (4) "Decorative pole" means a streetlight pole  
4 specially designed and placed for aesthetic purposes and on which  
5 no appurtenances or attachments, other than specially designed  
6 informational or directional signage or temporary holiday or  
7 special event attachments, have been placed or are permitted to be  
8 placed according to nondiscriminatory municipal codes.

9 (5) "Design district" means an area that is zoned, or  
10 otherwise designated by municipal code, and for which the city  
11 maintains and enforces unique design and aesthetic standards on a  
12 uniform and nondiscriminatory basis.

13 (6) "Historic district" means an area that is zoned or  
14 otherwise designated as a historic district under municipal, state,  
15 or federal law.

16 (7) "Law" means common law or a federal, state, or  
17 local law, statute, code, rule, regulation, order, or ordinance.

18 (8) "Macro tower" means a guyed or self-supported pole  
19 or monopole greater than the height parameters prescribed by  
20 Section 284.103 and that supports or is capable of supporting  
21 antennas.

22 (9) "Micro network node" means a network node that is  
23 not larger in dimension than 24 inches in length, 15 inches in  
24 width, and 12 inches in height, and that has an exterior antenna, if  
25 any, not longer than 11 inches.

26 (10) "Municipally owned utility pole" means a utility  
27 pole owned or operated by a municipally owned utility, as defined by



1 Section 11.003, Utilities Code, and located in a public  
2 right-of-way.

3 (11) "Municipal park" means an area that is zoned or  
4 otherwise designated by municipal code as a public park for the  
5 purpose of recreational activity.

6 (12) "Network node" means equipment at a fixed  
7 location that enables wireless communications between user  
8 equipment and a communications network. The term:

9 (A) includes:

10 (i) equipment associated with wireless  
11 communications;

12 (ii) a radio transceiver, an antenna, a  
13 battery-only backup power supply, and comparable equipment,  
14 regardless of technological configuration; and

15 (iii) coaxial or fiber-optic cable that is  
16 immediately adjacent to and directly associated with a particular  
17 collocation; and

18 (B) does not include:

19 (i) an electric generator;

20 (ii) a pole; or

21 (iii) a macro tower.

22 (13) "Network provider" means:

23 (A) a wireless service provider; or

24 (B) a person that does not provide wireless  
25 services and that is not an electric utility but builds or installs  
26 on behalf of a wireless service provider:

27 (i) network nodes; or

1                   (ii) node support poles or any other  
2 structure that supports or is capable of supporting a network node.

3                   (14) "Node support pole" means a pole installed by a  
4 network provider for the primary purpose of supporting a network  
5 node.

6                   (15) "Permit" means a written authorization for the  
7 use of the public right-of-way or collocation on a service pole  
8 required from a municipality before a network provider may perform  
9 an action or initiate, continue, or complete a project over which  
10 the municipality has police power authority.

11                   (16) "Pole" means a service pole, municipally owned  
12 utility pole, node support pole, or utility pole.

13                   (17) "Private easement" means an easement or other  
14 real property right that is only for the benefit of the grantor and  
15 grantee and their successors and assigns.

16                   (18) "Public right-of-way" means the area on, below,  
17 or above a public roadway, highway, street, public sidewalk, alley,  
18 waterway, or utility easement in which the municipality has an  
19 interest. The term does not include:

20                           (A) a private easement; or

21                           (B) the airwaves above a public right-of-way with  
22 regard to wireless telecommunications.

23                   (19) "Public right-of-way management ordinance" means  
24 an ordinance that complies with Subchapter C.

25                   (20) "Public right-of-way rate" means an annual rental  
26 charge paid by a network provider to a municipality related to the  
27 construction, maintenance, or operation of network nodes within a

1 public right-of-way in the municipality.

2 (21) "Service pole" means a pole, other than a  
3 municipally owned utility pole, owned or operated by a municipality  
4 and located in a public right-of-way, including:

5 (A) a pole that supports traffic control  
6 functions;

7 (B) a structure for signage;

8 (C) a pole that supports lighting, other than a  
9 decorative pole; and

10 (D) a pole or similar structure owned or operated  
11 by a municipality and supporting only network nodes.

12 (22) "Transport facility" means each transmission  
13 path physically within a public right-of-way, extending with a  
14 physical line from a network node directly to the network, for the  
15 purpose of providing backhaul for network nodes.

16 (23) "Utility pole" means a pole that provides:

17 (A) electric distribution with a voltage rating  
18 of not more than 34.5 kilovolts; or

19 (B) services of a telecommunications provider,  
20 as defined by Section 51.002, Utilities Code.

21 (24) "Wireless service" means any service, using  
22 licensed or unlicensed wireless spectrum, including the use of  
23 Wi-Fi, whether at a fixed location or mobile, provided to the public  
24 using a network node.

25 (25) "Wireless service provider" means a person that  
26 provides wireless service to the public.

27 Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES.

1 (a) Except as provided by Section 284.109, a network node to which  
2 this chapter applies must conform to the following conditions:

3 (1) each antenna that does not have exposed elements  
4 and is attached to an existing structure or pole:

5 (A) must be located inside an enclosure of not  
6 more than six cubic feet in volume;

7 (B) may not exceed a height of three feet above  
8 the existing structure or pole; and

9 (C) may not protrude from the outer circumference  
10 of the existing structure or pole by more than two feet;

11 (2) if an antenna has exposed elements and is attached  
12 to an existing structure or pole, the antenna and all of the  
13 antenna's exposed elements:

14 (A) must fit within an imaginary enclosure of not  
15 more than six cubic feet;

16 (B) may not exceed a height of three feet above  
17 the existing structure or pole; and

18 (C) may not protrude from the outer circumference  
19 of the existing structure or pole by more than two feet;

20 (3) the cumulative size of other wireless equipment  
21 associated with the network node attached to an existing structure  
22 or pole may not:

23 (A) be more than 28 cubic feet in volume; or

24 (B) protrude from the outer circumference of the  
25 existing structure or pole by more than two feet;

26 (4) ground-based enclosures, separate from the pole,  
27 may not be higher than three feet six inches from grade, wider than

1 three feet six inches, or deeper than three feet six inches; and  
2 (5) pole-mounted enclosures may not be taller than  
3 five feet.

4 (b) The following types of associated ancillary equipment  
5 are not included in the calculation of equipment volume under  
6 Subsection (a):

- 7 (1) electric meters;
- 8 (2) concealment elements;
- 9 (3) telecommunications demarcation boxes;
- 10 (4) grounding equipment;
- 11 (5) power transfer switches;
- 12 (6) cut-off switches; and
- 13 (7) vertical cable runs for the connection of power  
14 and other services.

15 (c) Equipment attached to node support poles may not  
16 protrude from the outer edge of the node support pole by more than  
17 two feet.

18 (d) Equipment attached to a utility pole must be installed  
19 in accordance with the National Electrical Safety Code, subject to  
20 applicable codes, and the utility pole owner's construction  
21 standards.

22 SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY

23 Sec. 284.051. APPLICABILITY OF SUBCHAPTER. This subchapter  
24 applies only to activities related to transport facilities for  
25 network nodes, activities of a network provider collocating network  
26 nodes in the public right-of-way or installing, constructing,  
27 operating, modifying, replacing, and maintaining node support

1 poles in a public right-of-way, and municipal authority in relation  
2 to those activities.

3 Sec. 284.052. EXCLUSIVE USE PROHIBITED. A municipality may  
4 not enter into an exclusive arrangement with any person for use of  
5 the public right-of-way for the construction, operation,  
6 marketing, or maintenance of network nodes or node support poles.

7 Sec. 284.053. ANNUAL PUBLIC RIGHT-OF-WAY RATE. (a) A  
8 public right-of-way rate for use of the public right-of-way may not  
9 exceed an annual amount equal to \$250 multiplied by the number of  
10 network nodes installed in the public right-of-way in the  
11 municipality's corporate boundaries.

12 (b) At the municipality's discretion, the municipality may  
13 charge a network provider a lower rate or fee if the lower rate or  
14 fee is:

- 15 (1) nondiscriminatory;
- 16 (2) related to the use of the public right-of-way; and
- 17 (3) not a prohibited gift of public property.

18 Sec. 284.054. PUBLIC RIGHT-OF-WAY RATE ADJUSTMENT. (a) In  
19 this section, "consumer price index" means the annual revised  
20 Consumer Price Index for All Urban Consumers for Texas, as  
21 published by the federal Bureau of Labor Statistics.

22 (b) A municipality may adjust the amount of the public  
23 right-of-way rate not more often than annually by an amount equal to  
24 one-half the annual change, if any, in the consumer price index.  
25 The municipality shall provide written notice to each network  
26 provider of the new rate, and the rate shall apply to the first  
27 payment due to the municipality on or after the 60th day following

1 that notice.

2 Sec. 284.055. USE OF PUBLIC RIGHT-OF-WAY AND APPLICABLE  
3 RATE. (a) A network provider that wants to connect a network node  
4 to the network using the public right-of-way may:

5 (1) install its own transport facilities subject to  
6 Subsection (b); or

7 (2) obtain transport service from a person that is  
8 paying municipal fees to occupy the public right-of-way that are  
9 the equivalent of not less than \$28 per node per month.

10 (b) A network provider may not install its own transport  
11 facilities unless the provider:

12 (1) has a permit to use the public right-of-way; and

13 (2) pays to the municipality a monthly public  
14 right-of-way rate for transport facilities in an amount equal to  
15 \$28 multiplied by the number of the network provider's network  
16 nodes located in the public right-of-way for which the installed  
17 transport facilities provide backhaul unless or until the time the  
18 network provider's payment of municipal fees to the municipality  
19 exceeds its monthly aggregate per-node compensation to the  
20 municipality.

21 (c) A public right-of-way rate required by Subsection (b) is  
22 in addition to any public right-of-way rate required by Section  
23 284.053.

24 Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE  
25 POLES. A municipality, subject to an agreement with the  
26 municipality that does not conflict with this chapter, shall allow  
27 collocation of network nodes on service poles on nondiscriminatory

1 terms and conditions and at a rate not greater than \$20 per year per  
2 service pole.

3 Sec. 284.057. PROHIBITION ON OTHER COMPENSATION. A  
4 municipality may not require a network provider to pay any  
5 compensation other than the compensation authorized by this chapter  
6 for the right to use a public right-of-way for network nodes, node  
7 support poles, or transport facilities for network nodes.

8 SUBCHAPTER C. ACCESS AND APPROVALS

9 Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHT-OF-WAY.

10 (a) Except as specifically provided by this chapter, and subject  
11 to the requirements of this chapter and the approval of a permit  
12 application, if required, a network provider is authorized, as a  
13 permitted use, without need for a special use permit or similar  
14 zoning review and not subject to further land use approval, to do  
15 the following in the public right-of-way:

16 (1) construct, modify, maintain, operate, relocate,  
17 and remove a network node or node support pole;

18 (2) modify or replace a utility pole or node support  
19 pole; and

20 (3) collocate on a pole, subject to an agreement with  
21 the municipality that does not conflict with this chapter.

22 (b) A network provider taking an action authorized by  
23 Subsection (a) is subject to applicable codes, including applicable  
24 public right-of-way management ordinances.

25 Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE  
26 REQUIREMENTS. A network provider shall construct and maintain  
27 network nodes and node support poles described by Section 284.101



1 in a manner that does not:

2 (1) obstruct, impede, or hinder the usual travel or  
3 public safety on a public right-of-way;

4 (2) obstruct the legal use of a public right-of-way by  
5 other utility providers;

6 (3) violate nondiscriminatory applicable codes;

7 (4) violate or conflict with the municipality's  
8 publicly disclosed public right-of-way design specifications; or

9 (5) violate the federal Americans with Disabilities  
10 Act of 1990 (42 U.S.C. Section 12101 et seq.).

11 Sec. 284.103. GENERAL LIMITATION ON PLACEMENT OF POLES. A  
12 network provider shall ensure that each new, modified, or  
13 replacement utility pole or node support pole installed in a public  
14 right-of-way in relation to which the network provider received  
15 approval of a permit application does not exceed the lesser of:

16 (1) 10 feet in height above the tallest existing  
17 utility pole located within 500 linear feet of the new pole in the  
18 same public right-of-way; or

19 (2) 55 feet above ground level.

20 Sec. 284.104. INSTALLATION IN MUNICIPAL PARKS AND  
21 RESIDENTIAL AREAS. (a) A network provider may not install a new  
22 node support pole in a public right-of-way without the  
23 municipality's discretionary, nondiscriminatory, and written  
24 consent if the public right-of-way is in a municipal park or is  
25 adjacent to a street or thoroughfare that is:

26 (1) not more than 50 feet wide; and

27 (2) adjacent to single-family residential lots or

1 other multifamily residences or undeveloped land that is designated  
2 for residential use by zoning or deed restrictions.

3 (b) In addition to the requirement prescribed by Subsection  
4 (a), a network provider installing a network node or node support  
5 pole in a public right-of-way described by Subsection (a) shall  
6 comply with private deed restrictions and other private  
7 restrictions in the area that apply to those facilities.

8 Sec. 284.105. INSTALLATION IN HISTORIC OR DESIGN DISTRICTS.

9 (a) A network provider must obtain advance approval from a  
10 municipality before collocating new network nodes or installing new  
11 node support poles in an area of the municipality zoned or otherwise  
12 designated as a historic district or as a design district if the  
13 district has decorative poles. As a condition for approval of new  
14 network nodes or new node support poles in a historic district or a  
15 design district with decorative poles, a municipality may require  
16 reasonable design or concealment measures for the new network nodes  
17 or new node support poles. A municipality may request that a  
18 network provider comply with the design and aesthetic standards of  
19 the historic or design district and explore the feasibility of  
20 using certain camouflage measures to improve the aesthetics of the  
21 new network nodes, new node support poles, or related ground  
22 equipment, or any portion of the nodes, poles, or equipment, to  
23 minimize the impact to the aesthetics in a historic district or on a  
24 design district's decorative poles.

25 (b) This section may not be construed to limit a  
26 municipality's authority to enforce historic preservation zoning  
27 regulations consistent with the preservation of local zoning

1 authority under 47 U.S.C. Section 332(c)(7), the requirements for  
2 facility modifications under 47 U.S.C. Section 1455(a), or the  
3 National Historic Preservation Act of 1966 (54 U.S.C. Section  
4 300101 et seq.), and the regulations adopted to implement those  
5 laws.

6 Sec. 284.106. EQUIPMENT CABINETS. A network provider shall  
7 ensure that the vertical height of an equipment cabinet installed  
8 as part of a network node does not exceed the height limitation  
9 prescribed by Section 284.003, subject to approval of the pole's  
10 owner if applicable.

11 Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT.

12 (a) A network provider shall, in relation to installation for  
13 which the municipality approved a permit application, comply with  
14 nondiscriminatory undergrounding requirements, including  
15 municipal ordinances, zoning regulations, state law, private deed  
16 restrictions, and other public or private restrictions, that  
17 prohibit installing aboveground structures in a public  
18 right-of-way without first obtaining zoning or land use approval.

19 (b) A requirement or restriction described by Subsection  
20 (a) may not be interpreted to prohibit a network provider from  
21 replacing an existing structure.

22 Sec. 284.108. DESIGN MANUAL. (a) A municipality may adopt  
23 a design manual for the installation and construction of network  
24 nodes and new node support poles in the public right-of-way that  
25 includes additional installation and construction details that do  
26 not conflict with this chapter. The design manual may include:

27 (1) a requirement that an industry standard pole load

1 analysis be completed and submitted to the municipality indicating  
2 that the service pole to which the network node is to be attached  
3 will safely support the load; and

4 (2) a requirement that network node equipment placed  
5 on new and existing poles be placed more than eight feet above  
6 ground level.

7 (b) A network provider shall comply with a design manual, if  
8 any, in place on the date a permit application is filed in relation  
9 to work for which the municipality approved the permit application.

10 A municipality's obligations under Section 284.154 may not be  
11 tolled or extended pending the adoption or modification of a design  
12 manual.

13 Sec. 284.109. EXCEPTIONS. Subject to Subchapter D, a  
14 network provider may construct, modify, or maintain in a public  
15 right-of-way a network node or node support pole that exceeds the  
16 height or distance limitations prescribed by this chapter only if  
17 the municipality approves the construction, modification, or  
18 maintenance subject to all applicable zoning or land use  
19 regulations and applicable codes.

20 Sec. 284.110. DISCRIMINATION PROHIBITED. A municipality,  
21 in the exercise of the municipality's administrative and regulatory  
22 authority related to the management of and access to the public  
23 right-of-way, must be competitively neutral with regard to other  
24 users of the public right-of-way.

25 SUBCHAPTER D. APPLICATIONS AND PERMITS

26 Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS.

27 (a) Except as otherwise provided by this chapter, a municipality

1 may not prohibit, regulate, or charge for the installation or  
2 collocation of network nodes in a public right-of-way.

3 (b) A municipality may not directly or indirectly require,  
4 as a condition for issuing a permit required under this chapter,  
5 that the applicant perform services unrelated to the installation  
6 or collocation for which the permit is sought, including in-kind  
7 contributions such as reserving fiber, conduit, or pole space for  
8 the municipality.

9 (c) A municipality may not institute a moratorium, in whole  
10 or in part, express or de facto, on:

- 11 (1) filing, receiving, or processing applications; or  
12 (2) issuing permits or other approvals, if any, for  
13 the installation of network nodes or node support poles.

14 Sec. 284.152. AUTHORITY TO REQUIRE PERMIT. (a) Except as  
15 otherwise provided by this chapter, a municipality may require a  
16 network provider to obtain one or more permits to install a network  
17 node, node support pole, or transport facility in a public  
18 right-of-way if the permit:

19 (1) is of general applicability to users of the public  
20 right-of-way;

21 (2) does not apply exclusively to network nodes; and

22 (3) is processed on nondiscriminatory terms and  
23 conditions regardless of the type of entity submitting the  
24 application for the permit.

25 (b) A network provider that wants to install or collocate  
26 multiple network nodes inside the territorial jurisdiction of a  
27 single municipality is entitled to file a consolidated permit

1 application with the municipality for not more than 30 network  
2 nodes and receive permits for the installation or collocation of  
3 those network nodes.

4 Sec. 284.153. GENERAL PROCESS RELATING TO PERMIT  
5 APPLICATION. (a) Except as otherwise provided by this section, a  
6 municipality may not require an applicant to provide more  
7 information to obtain the permit than a telecommunications utility  
8 that is not a network provider is required to provide unless the  
9 information directly relates to the requirements of this chapter.

10 (b) As part of the standard form for a permit application, a  
11 municipality may require the applicant to include applicable  
12 construction and engineering drawings and information to confirm  
13 that the applicant will comply with the municipality's publicly  
14 disclosed public right-of-way design specifications and applicable  
15 codes.

16 (c) A municipality may require an applicant to provide:

17 (1) information reasonably related to the provider's  
18 use of the public right-of-way under this chapter to ensure  
19 compliance with this chapter;

20 (2) a certificate that the network node complies with  
21 applicable regulations of the Federal Communications Commission;  
22 and

23 (3) certification that the proposed network node will  
24 be placed into active commercial service by or for a network  
25 provider not later than the 60th day after the date the construction  
26 and final testing of the network node is completed.

27 Sec. 284.154. MUNICIPAL REVIEW PROCESS. (a) A

1 municipality shall process each permit application on a  
2 nondiscriminatory basis.

3 (b) Not later than the 30th day after the date the  
4 municipality receives an application for a permit for a network  
5 node or node support pole, or the 10th day after the date the  
6 municipality receives an application for a permit for a transport  
7 facility, the municipality shall determine whether the application  
8 is complete and notify the applicant of that determination. If the  
9 municipality determines that the application is not complete, the  
10 municipality shall specifically identify the missing information.

11 (c) A municipality shall approve an application that does  
12 not require zoning or land use approval under this chapter unless  
13 the application or the corresponding work to be performed under the  
14 permit does not comply with the municipality's applicable codes or  
15 other municipal rules, regulations, or other law that is consistent  
16 with this chapter.

17 (d) A municipality must approve or deny an application for a  
18 node support pole not later than the 150th day after the date the  
19 municipality receives the complete application. A municipality  
20 must approve or deny an application for a network node not later  
21 than the 60th day after the date the municipality receives the  
22 complete application. A municipality must approve or deny an  
23 application for a transport facility not later than the 21st day  
24 after the date the municipality receives a complete application.  
25 An application for a permit for a node support pole, network node,  
26 or transport facility shall be deemed approved if the application  
27 is not approved or denied on or before the applicable date for

1 approval or denial prescribed by this subsection.

2 (e) A municipality that denies a complete application must  
3 document the basis for the denial, including the specific  
4 applicable code provisions or other municipal rules, regulations,  
5 or other law on which the denial was based. The municipality shall  
6 send the documentation by electronic mail to the applicant on or  
7 before the date the municipality denies the application.

8 (f) Not later than the 30th day after the date the  
9 municipality denies the application, the applicant may cure the  
10 deficiencies identified in the denial documentation and resubmit  
11 the application without paying an additional application fee, other  
12 than a fee for actual costs incurred by the municipality.  
13 Notwithstanding Subsection (d), the municipality shall approve or  
14 deny the revised completed application after a denial not later  
15 than the 90th day after the date the municipality receives the  
16 completed revised application. The municipality's review of the  
17 revised application is limited to the deficiencies cited in the  
18 denial documentation.

19 Sec. 284.155. TIME OF INSTALLATION. (a) A network  
20 provider shall begin the installation for which a permit is granted  
21 not later than six months after final approval and shall diligently  
22 pursue the installation to completion.

23 (b) Notwithstanding Subsection (a), the municipality may  
24 place a longer time limit on completion or grant reasonable  
25 extensions of time as requested by the network provider.

26 Sec. 284.156. APPLICATION FEES. (a) A municipality may  
27 charge an application fee for a permit only if the municipality



1 requires the payment of the fee for similar types of commercial  
2 development inside the municipality's territorial jurisdiction  
3 other than a type for which application or permit fees are not  
4 allowed by law.

5 (b) The amount of an application fee charged by a  
6 municipality may not exceed the lesser of:

7 (1) the actual, direct, and reasonable costs the  
8 municipality determines are incurred in granting or processing an  
9 application that are reasonably related in time to the time the  
10 costs of granting or processing an application are incurred; or

11 (2) \$500 per application covering up to five network  
12 nodes, \$250 for each additional network node per application, and  
13 \$1,000 per application for each pole.

14 (c) In determining for purposes of Subsection (b)(1) the  
15 amount of the actual, direct, and reasonable costs, the  
16 municipality may not:

17 (1) include costs incurred by the municipality in  
18 relation to third-party legal or engineering review of an  
19 application; or

20 (2) direct payments or reimbursement of third-party  
21 public right-of-way rates or fees charged on a contingency basis or  
22 under a result-based arrangement.

23 Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Notwithstanding  
24 any other provision of this chapter, a municipality may not require  
25 a network provider to submit an application, obtain a permit, or pay  
26 a rate for:

27 (1) routine maintenance that does not require

1 excavation or closing of sidewalks or vehicular lanes in a public  
2 right-of-way;

3 (2) replacing or upgrading a network node or pole with  
4 a node or pole that is substantially similar in size or smaller and  
5 that does not require excavation or closing of sidewalks or  
6 vehicular lanes in a public right-of-way; or

7 (3) the installation, placement, maintenance,  
8 operation, or replacement of micro network nodes that are strung on  
9 cables between existing poles or node support poles, in compliance  
10 with the National Electrical Safety Code.

11 (b) For purposes of Subsection (a)(2):

12 (1) a network node or pole is considered to be  
13 "substantially similar" if:

14 (A) the new or upgraded network node, including  
15 the antenna or other equipment element, will not be more than 10  
16 percent larger than the existing node, provided that the increase  
17 may not result in the node exceeding the size limitations provided  
18 by Section 284.003; and

19 (B) the new or upgraded pole will not be more than  
20 10 percent higher than the existing pole, provided that the  
21 increase may not result in the pole exceeding the applicable height  
22 limitations prescribed by Section 284.103;

23 (2) the replacement or upgrade does not include  
24 replacement of an existing node support pole; and

25 (3) the replacement or upgrade does not defeat  
26 existing concealment elements of a node support pole.

27 (c) The determination under Subsection (b)(1) of whether a

1 replacement or upgrade is substantially similar is made by  
2 measuring from the dimensions of the network node or node support  
3 pole as approved by the municipality.

4 (d) Notwithstanding Subsection (a):

5 (1) a municipality may require advance notice of work  
6 described by that subsection;

7 (2) a network provider may replace or upgrade a pole  
8 only with the approval of the pole's owner; and

9 (3) the size limitations may not in any event exceed  
10 the parameters prescribed by Section 284.003 without the  
11 municipality's approval in accordance with Section 284.109, with  
12 the municipality acting on behalf of this state as the fiduciary  
13 trustee of public property.

14 SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

15 Sec. 284.201. USE OF MUNICIPALLY OWNED UTILITY POLES.

16 (a) The governing body of a municipally owned utility shall allow  
17 collocation of network nodes on municipally owned utility poles on  
18 nondiscriminatory terms and conditions and pursuant to a negotiated  
19 pole attachment agreement, including any applicable permitting  
20 requirements of the municipally owned utility.

21 (b) The annual pole attachment rate for the collocation of a  
22 network node supported by or installed on a municipally owned  
23 utility pole shall be based on a pole attachment rate consistent  
24 with Section 54.204, Utilities Code, applied on a per-foot basis.

25 (c) The requirements of Subchapters B, C, and D applicable  
26 to the installation of a network node supported by or installed on a  
27 pole do not apply to a network node supported by or installed on a

1 municipally owned utility pole.

2 SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

3 Sec. 284.251. DEFINITIONS. In this subchapter:

4 (1) "Cable service" and "video service" have the  
5 meanings assigned by Section 66.002, Utilities Code.

6 (2) "Electric cooperative" has the meaning assigned by  
7 Section 11.003, Utilities Code.

8 (3) "Electric utility" has the meaning assigned by  
9 Section 31.002, Utilities Code.

10 (4) "Telecommunications provider" has the meaning  
11 assigned by Section 51.002, Utilities Code.

12 (5) "Telephone cooperative" has the meaning assigned  
13 by Section 162.003, Utilities Code.

14 Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES,  
15 ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND  
16 TELECOMMUNICATIONS PROVIDERS. Nothing in this chapter shall govern  
17 attachment of network nodes on poles and other structures owned or  
18 operated by investor-owned electric utilities, electric  
19 cooperatives, telephone cooperatives, or telecommunications  
20 providers. This chapter does not confer on municipalities any new  
21 authority over those utilities, cooperatives, or providers.

22 Sec. 284.253. EFFECT ON PROVIDERS OF CABLE SERVICES OR  
23 VIDEO SERVICES. (a) An approval for the installation, placement,  
24 maintenance, or operation of a network node or transport facility  
25 under this chapter may not be construed to confer authorization to  
26 provide:

27 (1) cable service or video service without complying

1 with all terms of Chapter 66, Utilities Code; or

2 (2) information service as defined by 47 U.S.C.  
3 Section 153(24), or telecommunications service as defined by 47  
4 U.S.C. Section 153(53), in the public right-of-way.

5 (b) Except as provided by this chapter, a municipality may  
6 not adopt or enforce any regulations or requirements that would  
7 require a wireless service provider, or its affiliate, that holds a  
8 cable or video franchise under Chapter 66, Utilities Code, to  
9 obtain any additional authorization or to pay any fees based on the  
10 provider's provision of wireless service over its network nodes.

11 SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

12 Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS.

13 (a) Subject to this chapter and applicable federal and state law,  
14 a municipality may continue to exercise zoning, land use, planning,  
15 and permitting authority in the municipality's boundaries,  
16 including with respect to utility poles.

17 (b) A municipality may exercise that authority to impose  
18 police-power-based regulations for the management of the public  
19 right-of-way that apply to all persons subject to the municipality.

20 (c) A municipality may impose police-power-based  
21 regulations in the management of the activities of network  
22 providers in the public right-of-way only to the extent that the  
23 regulations are reasonably necessary to protect the health, safety,  
24 and welfare of the public.

25 Sec. 284.302. INDEMNIFICATION. The indemnification  
26 provisions of Sections 283.057(a) and (b) apply to a network  
27 provider accessing a public right-of-way under this chapter.

1       Sec. 284.303. RELOCATION. Except as provided in existing  
2 state and federal law, a network provider shall relocate or adjust  
3 network nodes in a public right-of-way in a timely manner and  
4 without cost to the municipality managing the public right-of-way.

5       Sec. 284.304. INTERFERENCE. (a) A network provider shall  
6 operate all network nodes in accordance with all applicable laws,  
7 including regulations adopted by the Federal Communications  
8 Commission.

9       (b) A network provider shall ensure that the operation of a  
10 network node does not cause any harmful radio frequency  
11 interference to a Federal Communications Commission-authorized  
12 mobile telecommunications operation of the municipality operating  
13 at the time the network node was initially installed or  
14 constructed. On written notice, a network provider shall take all  
15 steps reasonably necessary to remedy any harmful interference.

16       SECTION 2. (a) In this section, "collocation," "network  
17 node," "network provider," and "public right-of-way" have the  
18 meanings assigned by Section 284.002, Local Government Code, as  
19 added by this Act.

20       (b) Public/private agreements between a municipality and a  
21 network provider for the deployment of network nodes in the public  
22 right-of-way on fair and reasonable terms as provided by Chapter  
23 284, Local Government Code, as added by this Act, and corresponding  
24 ordinances governing that deployment, are necessary to protect the  
25 health, safety, and welfare of the public by facilitating robust  
26 and dependable wireless networks. Accordingly, those agreements  
27 and ordinances shall be conformed as provided by this section.

1           (c) Subject to Subsection (d) of this section, the rates,  
2 terms, and conditions of agreements and ordinances entered into or  
3 enacted before the effective date of this Act shall apply to all  
4 network nodes installed and operational before the effective date  
5 of this Act.

6           (d) For all network nodes installed and operational on or  
7 after the effective date of this Act:

8                 (1) if a rate, term, or condition of an agreement or  
9 ordinance related to the construction, collocation, operation,  
10 modification, or maintenance of network nodes does not comply with  
11 the requirements of Chapter 284, Local Government Code, as added by  
12 this Act, a municipality shall amend the agreement or ordinance to  
13 comply with the requirements of Chapter 284, Local Government Code,  
14 as added by this Act, and the amended rates, terms, or conditions  
15 shall take effect for those network nodes on the six-month  
16 anniversary of the effective date of this Act; and

17                 (2) the rates, terms, and conditions of each agreement  
18 executed, and each ordinance enacted, on or after the effective  
19 date of this Act shall comply with the requirements of Chapter 284,  
20 Local Government Code, as added by this Act.

21           SECTION 3. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1004 passed the Senate on April 6, 2017, by the following vote: Yeas 29, Nays 0, two present not voting; and that the Senate concurred in House amendment on May 25, 2017, by the following vote: Yeas 29, Nays 0, two present not voting.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1004 passed the House, with amendment, on May 18, 2017, by the following vote: Yeas 140, Nays 6, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



