



It's real.

MEMORANDUM

To: City of Seguin Mayor and Council

From: Andy Quittner, City Attorney *AQ*

Date: November 20, 2020

Re: Ordinance requiring license or franchise for commercial use of right-of-way and setting fee for small cell nodes

Currently the city has only spotty regulation of commercial activity occurring in or on city rights-of-way. For some things, such as Uber, Texas law has largely, if not completely, pre-empted the City's ability to regulate the activity. In other areas, such as small cell tower deployment, Texas law, albeit currently being challenged in court, leaves little room for City regulation or assessment of fees reasonably related to the cost of service.

City staff has received requests for deployment of small cell nodes, and there has been some inquiry concerning share economy scooters. Given the current interest, which will increase as the City grows, a license or franchise requirement for commercial use of City rights-of-way is suggested. The proposed Ordinance sets up a requirement that a user obtain a license or franchise prior to commercial use of City rights-of-way. License and franchise requirements would necessarily vary with the business type with particulars designed to meet both the city's and the business's needs. For example, food trucks are currently licensed to use certain city streets for operation; thus, food truck operation would not be effected by this Ordinance.

Similarly, small cell nodes require a licensing procedure that is mostly governed by State law. The state does, however, allow the City to collect a franchise fee for small cell tower use of right-of-way, but the fee does not really cover the potential cost to the City (which is one of the subjects of the current law suit). To defray any costs of the use, the City should, however, collect the fee currently allowed.

Through licensing the City can at least require that users not create hazards, maintain their facilities, and repair any damage during installation. With future business such as shared transportation, there will be interest in limiting location, ensuring that placement does not create barriers for persons with disabilities, and that pedestrians and other users are not endangered.