

**CITY OF SEGUIN**

**ORDINANCE NO.:**

**STATE OF TEXAS**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEGUIN, TEXAS AMENDING THE SEGUIN CODE OF ORDINANCES ARTICLE 90, STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES, BY ADDING A NEW ARTICLE VI, LICENSE OR FRANCHISE FOR USE OF PUBLIC RIGHT-OF-WAY; AND AMENDING APPENDIX C – FEE SCHEDULE, CHAPTER 90, TO ADD A FRANCHISE FEE FOR THE LOCATION OF SMALL CELL NODES IN CITY RIGHT-OF-WAY; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES; DECLARING AN EFFECTIVE DATE, AND AUTHORIZING CITY STAFF TO SUBMIT THIS ORDINANCE AS A SUPPLEMENT TO THE SEGUIN CODE OF ORDINANCES**

**WHEREAS**, the City does not presently have any organized scheme to regulate the commercial use of its streets and rights-of-way; and

**WHEREAS**, with the advent of small cell towers and transportation sharing businesses city staff recommends that the City begin considering a licensing and franchise scheme in order to maintain city streets and safety of its residents; and

**WHEREAS**, as cities grow, bicycle and scooter sharing companies have dumped scooters and bicycles around cities creating numerous safety concerns as well as violations of the Americans with Disabilities Act for which cities can be held liable; and

**WHEREAS**, current licensed users of city streets for commercial purposes, such as food trucks, would not be affected by the proposed Ordinance; and

**WHEREAS**, in 2017 the Texas Legislature passed S.B. 1004 creating Chapter 284 of the Texas Local Government Code to limit a municipality's ability to regulate as well as charge a franchise fee to telecommunications companies using city rights-of-way; and

**WHEREAS**, the legislature set the maximum annual rate for use of municipal right-of-way to \$250.00 per year per node, with a provision to increase that amount in accordance with one-half the annual change in the Consumer Price Index for all Urban Consumers for Texas; and

**WHEREAS**, the CPI-U for the years 2018 to present has been, 1.9%, 1.7% and 1.4% which allows the City to set an initial rental rate at \$256.31 per node per year; and

**WHEREAS**, the City has received requests for small cell node locations within City rights-of-way; and

**WHEREAS**, city staff recommends the following Ordinance establishing a requirement for licenses or franchises and establishing a fee for the placement of small cell nodes within City rights-of-way.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of Seguin, Texas:

**SECTION ONE.** The Seguin Code of Ordinances, Chapter 90, Streets, Sidewalks, and Other Public Places, is amended by the addition of a new Article VI, to read as follows:

**Article VI. COMMERCIAL USE OF CITY STREETS AND RIGHTS OF WAY**

**90-200. License or Franchise Required**

- (a). No person or entity may use any city right-of-way for either commercial purposes or the installation of permanent facilities without first obtaining a license for use or a franchise from the City.
- (b). The terms and conditions of the license or franchise shall be determined dependent on the type of facility or business seeking to use city streets and rights-of-way.
- (c). The City reserves its rights to regulate activity on its property and nothing in this Section shall be construed as granting a right to a license or franchise.

**90-201. Penalties for violations.**

- (a) Any person or employee who shall violate this article shall, upon conviction, be punished pursuant to section 1-14.
- (b) Any person who shall operate or permit the operation on his behalf of any business or place equipment in violation of this article shall, upon conviction, be punished pursuant to section 1-14, Seguin Code of Ordinances.
- (c) An owner, offer, manager or other person receiving a license of franchise commits an offense if he, either personally or through an employee or agent, violates, allows a violation of, or fails to comply with a term or condition of any license or permit issued to use city streets and rights-of-way.

**SECTION TWO.** Appendix C, Chapter 90, Streets, Sidewalks and Other Public Places is amended by the addition of a new Article VI (existing remains unchanged):

**Article VI. License and Franchise Fees**

(a)	Small Cell Structures per node per year	256.31
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**SECTION THREE.** In accordance with Section 3.10 of the Seguin City Charter, this Ordinance shall become effective beginning October 1, 2020, said date being at least ten days after publication of this ordinance.

**SECTION FOUR.** If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portions of the Ordinance, which shall continue to have full force and effect.

**SECTION FIVE.** City Staff is hereby authorized to submit this Ordinance as a supplement to the Seguin Code of Ordinances.

**PASSED UPON FIRST READING** this 1<sup>st</sup> day of December 2020.

**PASSED UPON SECOND READING** this 15<sup>th</sup> day of December 2020.

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DONNA DODGEN , Mayor

ATTEST:

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Naomi Manski, City Secretary