

CITY OF CELINA, TEXAS

ORDINANCE 2017-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CELINA, TEXAS, REQUIRING INSTALLATION AND CONSTRUCTION OF A FIBER OPTIC SYSTEM WITHIN THE CITY OF CELINA AND ESTABLISHING STANDARDS FOR THE INSTALLATION AND CONSTRUCTION OF THE FIBER OPTIC SYSTEM; PROVIDING FOR INCORPORATION OF FINDINGS; PROVIDING FOR AMENDMENT TO THE CODE OF ORDINANCES; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, AND SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Celina, Texas ("City Council") has investigated and determined that expanded broadband access via a fiber optic network in the City of Celina, Texas ("City") is a fundamental aspect of the infrastructure required to educate youth, create jobs, promote public safety, improve citizens' standards of living and deliver essential services such as health care; and

WHEREAS, requiring conduit to be installed as part of public improvements projects or developments in order to accommodate anticipated future demand for access to internet and telecommunications services will assist the City in responsibly managing such facilities and areas by reducing or eliminating the need for excavation within public streets and rights-of-way when telecommunications service providers seek to locate underground telecommunications facilities within such streets and public property, easements and rights-of-way in the future; reducing or eliminating the traffic disruption that occurs whenever excavation occurs within or around these areas; and reducing or eliminating the loss of pavement integrity and diminishment of the useful life of pavement that occurs whenever paved or improved streets and rights-of-way are cut and excavated; and

WHEREAS, according to the Federal Communications Commission, the largest cost element for deploying broadband is burying fiber optic cables and conduit underground and the Federal and the Federal Highway Administration has indicated that ninety percent of the cost of deploying broadband is when the work requires significant excavation of the roadway; and

WHEREAS, coordinating road construction projects with the installation of broadband facilities will save on costs incurred by repeated excavation in areas where the entire right-of-way is paved or developed and reduces deployment time by preventing the need to acquire duplicative reviews and permits for work done at the same location; and

WHEREAS, the City Council finds that the benefits and positive impact associated with the creation of such a network within the City have been recognized and acknowledged, and the City desires to incentivize the provision of high-speed broadband internet service to the City's

residential and commercial residents and visitors as part of an effort to bridge the digital divide of its citizens and community as part of the City's Gigabit City Initiative; and

WHEREAS, the installation of fiber optic cable within the City will further the goals of the City's Gigabit City Initiative while at the same time commence the creation of a fiber optic network for the City which would largely amount to establishment of what is generally referred to or known as the "middle mile" of fiber; and

WHEREAS, the incremental installation of fiber optic cable within property owned by the City or otherwise within public rights-of-way or easements in conjunction with public improvements projects and private development in these areas will assist in expediting the realization of a fiber optic network within the City, decrease the costs associated with the construction and creation of such a system and will allow the City to control use of these public ways through agreements on access to and use of such City-owned cable and infrastructure and in exchange of consideration to the City; and

WHEREAS, the installation of fiber optic cable within public property, easements and rights-of-way will also provide access to meet the needs of City departments, public safety organizations and other publicly owned and operated facilities as well as protecting these areas by improving both the management and regulation of competing demands through the elimination of duplicate fiber optic facilities within public property, easements and rights-of-way; protecting the economic vitality of the City by providing the broadband transport service and fiber facilities leasing required by broadband service providers; and reducing the costs associated with maintaining sidewalks, pavement and public facilities located within public property, easements and rights-of-way by minimizing the number of pavement cuts and dislocation of other public facilities necessitated by the construction or installation of fiber optic facilities; and

WHEREAS, a fiber-optic network will allow better, faster communications with emergency responders; and

WHEREAS, in furtherance of these interests, the City Council finds that all road improvement and other capital improvements projects involving the resurfacing or overlaying, refurbishment, replacement and/or widening of existing public streets, alleys and roadways or sidewalks or walkways in the City as well as the creation of new improved streets, alleys, roadways, sidewalks or walkways by the City or private developers or the installation of any new drainage or sewer pipes or infrastructure within City property, easements or public rights-of-way shall include as part of their projects and the costs thereof the construction and installation of one 288-count fiber cable that is installed in an underground conduit which is a minimum of four inches (4") in diameter with a minimum of four (4) one-inch HDPE-SDR 15.5 inner-ducts within City property, easements or public rights-of-way to which the City has access or ownership as well as installation and construction of proper appurtenances and attendant facilities thereto, which shall be located parallel to the nearest public street or roadway and meets or exceeds specifications of emerging industry standards for provision of ultra-speed broadband service, with the exact locations of such infrastructure and the specifications of which to be determined and periodically updated by the City Engineer or his or her designee in reliance on such industry standards and consideration of needs of the City's Gigabit City Initiative; and

WHEREAS, the City Council desires to foster a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another; and

WHEREAS, the City Council seeks to promote widespread access to the most technologically advanced telecommunications services for all City residents and businesses in a nondiscriminatory manner regarding authorization or placement of facilities in the right-of-way, access to a building, or rates or terms; and

WHEREAS, it is the responsibility of the City to protect and control access to public rights-of-way and ensure that all service providers utilizing City property, facilities or rights-of-way comply with all applicable state and local health, safety and other laws; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of the City to establish standards for the installation and construction of a fiber optic system within the City as set forth below.

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

SECTION 1
INCORPORATION OF FINDINGS

The above and foregoing findings are true and correct and are incorporated into the body of this Ordinance and made a part hereof for all purposes as if fully set forth herein.

SECTION 2
PURPOSE

This Ordinance is intended to provide for the construction of infrastructure sufficient for the deployment of communication lines, wires or cables in the future by pulling the same through the conduit and appurtenances installed pursuant to this Ordinance without excavating within public property, easements and rights-of-way or to otherwise use and oversee use of such infrastructure and facilities. This Ordinance is not intended to require telecommunications or broadband service providers to install additional ducts or conduit but is intended to require those constructing public streets and roadways or performing any public improvements projects along or under public streets, easements, rights-of-way and/or property, including the City, private developers and all others, to provide and install such conduit and appurtenances as may be necessary to accommodate future telecommunications and broadband service needs within public streets, easements, rights-of-ways and property without further excavation or disturbance.

SECTION 3
AMENDMENTS

3.01 That the City of Celina Code of Ordinances, Chapter 10: Subdivision Regulation: Article 10.03: Subdivision Ordinance: Division 4. Design Standards: Section 10.03.126: Improvements; shall be amended by the addition of Subsection 10.03.126(i) to read as follows:

“(i) Fiber Optic Network Conduit and Fiber Optic Cable

(1) **Requirements.** All subdivisions and road improvement and other capital improvements projects involving the creation of new improved streets, alleys, roadways, sidewalks or walkways by the City or any other person or entity, including private developers, or the installation of any new drainage or sewer pipes or infrastructure within City property, easements or public rights-of-way, or where feasible the resurfacing, overlaying, refurbishment, replacement and/or widening of existing public streets, alleys, roadways, sidewalks or walkways, shall include as part of their projects and the costs thereof the construction and installation of fiber optic network conduit that contains at least one fiber optic cable within City property, easements, or public rights-of-way to which the City has access or ownership as well as installation and construction of proper appurtenances and attendant facilities thereto, which shall be located parallel to the nearest public street or roadway and meets or exceeds specifications of emerging industry standards for provision of ultra-speed broadband service, with the exact locations of such infrastructure and the specifications of which to be determined by the City Engineer or his or her designee in reliance on such industry standards and consideration of the needs, objectives and findings of the City’s Gigabit City Initiative. The following additional requirements shall also apply:

(A) In addition to installing fiber optic network conduit, the party constructing the street will be required to install such vaults, manholes, hand-holes and other appurtenances and facilities as are necessary or needed to accommodate installation and connection of fiber optic cable within the fiber optic network conduit.

(B) All construction and installation required in this Subsection shall be accomplished according to construction standards adopted by the City Engineer or the City’s designee in consideration of the needs of the City’s Gigabit City Initiative. Such standards shall be adopted with due consideration given to existing and anticipated technologies and industry standards.

(C) All fiber optic network conduit, fiber optic cable, facilities and appurtenances installed by private parties or developers or by persons or entities other than the City pursuant to this Section shall be conveyed and dedicated to the City either

with or as part of the dedication and conveyance of the public street and/or right-of-way to the City or otherwise.

- (D) All construction and installation costs shall be the responsibility of the party constructing the public street, roadway or improvements project that falls within the purview of this Ordinance.

- (2) **Definitions.** For purposes of this Subsection, the following terms have the meanings ascribed below:

Fiber optic network conduit means a minimum four inch (4") conduit containing a minimum of four (4) inner-ducts used to enclose or carry fiber optic cable or other wires or lines and attendant parts and accessories buried alongside a roadway or surface mounted on bridges, overpasses and other facilities where below-ground placement is impossible or impractical, all in accordance with emerging industry standards and as determined by the City Engineer or his or her designee.

Fiber optic cable means a minimum 288-count fiber cable bundle.

- (3) **Use by Broadband Service Providers.** Whenever fiber optic network conduit and/or fiber optic cable installed or to be installed under this Subsection is available or will become available within a newly constructed public street or right-of-way or other improvements project that falls with the scope or purview of this Subsection upon dedication, all broadband service providers thereafter locating fiber optic cable, wire or lines within or along such street or right-of-way shall be required to use available dark fiber (currently unused fiber optic strands) within the then-existing infrastructure or to locate their cable, wire or lines within such fiber optic network conduit unless it can be demonstrated to the reasonable satisfaction of the City Engineer that such use or location is not technologically feasible or reasonably practicable or unless such provider is exempt or otherwise not required by other law to comply with the provisions of this Subsection. Fiber optic cable and strands as well as fiber optic network conduit capacity shall be allocated to broadband service providers on a first-come, first-served basis; provided, however, that the City may reserve capacity within such fiber and conduits for its own use; and provided further, that the City Engineer may adopt additional reasonable rules for fiber optic cable or strand and fiber optic network conduit allocation in order to ensure that all broadband service providers have reasonable access to the City's rights-of-way and that no barriers to entry or competition result from the allocation of cable, strand or conduit space.
- (4) **Fees.** Any person or entity constructing fiber optic network conduit or installing fiber as required by this Subchapter shall pay a nonrefundable fee in an amount as provided for in the fee schedule of the City for the City to

recover its costs incurred for plan review, engineering design and approval, purchasing materials, and costs associated with issuing, processing, and verifying applications, inspecting job sites and restoration improvements, and other costs the City may incur in implementing the provisions of this Subchapter. The City reserves the right to charge reasonable fees for the use of fiber optic cable and fiber optic network conduit and attendant accessories, facilities and infrastructure installed pursuant to this Ordinance, to the extent consistent with and as limited by federal and state laws and regulations. Any such fee amounts shall be established in the fee schedule of the City.”

SECTION 4 **PENALTY CLAUSE**

Any person, firm, entity or corporation violating any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding FIVE HUNDRED AND 00/100 DOLLARS (\$500.00). Each continuing day’s violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 5 **SAVINGS/ REPEALING CLAUSE**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances, or parts thereof, in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other Ordinances on this date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 6 **SEVERABILITY**

The provisions of the Ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new revised provisions in compliance with the authority’s decisions or enactment.

SECTION 7
PUBLICATION CLAUSE

The City Secretary of the City of Celina is hereby directed to publish in the Official Newspaper of the City of Celina the Caption, and Effective Date Clause of this Ordinance as required by Section 52.013 of the Local Government Code.

SECTION 8
ENGROSSMENT AND ENROLLMENT

The City Secretary is hereby directed to engross and enroll this Ordinance by copying the descriptive Caption in the minutes of the City Council and by filing this Ordinance in the Ordinance records of the City.

SECTION 9
EFFECTIVE DATE

This Ordinance shall become effective from and after its date of passage in accordance with law.

AND IT IS SO ORDAINED.

PASSED AND APPROVED by the City Council of the City of Celina, Texas this _____ day of _____, 2017.

Sean Terry, Mayor
City of Celina, Texas

ATTEST:

Vicki Faulkner, City Secretary
City of Celina, Texas

[SEAL]

APPROVED AS TO FORM:

Julie Fort, Attorney for the City
City of Celina, Texas

