

ORDINANCE NO. 010125-15

AN ORDINANCE AMENDING ORDINANCE NUMBER 000928-33, GRANTING AT&T CORPORATION A RENEWAL LICENSE UNDER CHAPTER 15-12 OF THE CITY CODE RELATING TO USE OF THE PUBLIC RIGHTS OF WAY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Section 1 (B) of Ordinance Number 000928-33 is amended to read:

- (B) AT&T agrees to comply with the provisions of this ordinance. [~~No~~] AT&T may not provide services other than long distance transmission services [will be provided without the express consent of the City] except as otherwise authorized by law.

PART 2. Section 2 of Ordinance Number 000928-33 is amended to read as follows:

FACILITIES means wires, cables, underground conduit, manholes or other structures or appurtenances that allow delivery of long distance transmission services or other telecommunications services in accordance with the terms of this ordinance.

PART 3. Section 3 of Ordinance Number 000928-33 is amended to read as follows:

- (B) AT&T shall place and maintain [~~certain~~] licensed facilities underground according to applicable City requirements.
- (C) At the City's request, AT&T shall furnish the City accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of the facilities performed by AT&T in the public rights-of-way. If any information furnished is erroneous as to the location of facilities, and reliance on this information results in construction delays or additional expenses to the City, AT&T [~~shall be~~] is liable for the cost of delays and the additional expenses proximately caused by the erroneous information.

(1) AT&T shall perform excavations and other construction in the public rights-of-way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever the Director determines it is technically possible, and the cost to grantee does not exceed the cost of repaving the street. The Director of Public Works shall waive the requirement of trenchless technology if he determines that the field conditions warrant the waiver. AT&T shall minimize interference with the use of public and private property and shall follow the construction directions given by the City.

(7) If there is a threat or hazard to the health safety of citizens caused by AT&T's facilities, AT&T, upon receipt of a request from the Director, shall remove or modify its facility to abate the threat or hazard on or before the reasonable deadline provided by the Director. ~~[declares an emergency and requests the removal or abatement of facilities, by written notice, AT&T shall remove or abate AT&T's facilities by the reasonable deadline provided in the Director's request].~~ AT&T and the City shall cooperate to the extent possible to assure continuity of service. If AT&T, after facsimile or telephone notice, fails or refuses to remove or abate AT&T's facilities by the date provided in the Director's request, the City may remove or abate the facility, at the sole cost and expense of AT&T, without paying compensation to AT&T and without the City incurring liability for damages.

PART 4. Section 4 (B) of Ordinance Number 000928-33 is amended to read as follows:

(B) The Director of Public Works shall assign priorities among competing uses of the public rights-of-way according to the chronological order in which completed permit applications are received.

PART 5. Section 5 (C) of Ordinance Number 000928-33 is amended to read as follows:

(C) The Director shall give prompt written notice to AT&T of any claim for which the City seeks indemnification. AT&T ~~[shall have the right to]~~ may investigate and defend these claims ~~[with written notice to the City Attorney].~~ AT&T shall, upon notice from the City and at AT&T's sole cost and expense, investigate, resist and defend the City with legal counsel selected by AT&T. AT&T may not admit liability on behalf of the City without the City's written consent. The City may not admit liability for, nor enter into any compromise or settlement of, any claim for which the City seeks indemnification under this agreement without the prior written consent of AT&T. The City may participate in the defense of any litigation by its own counsel at its own expense. Settlement or compromise of [any such] a claim must have prior approval of the City Attorney.

PART 6. Section 7 (C) of Ordinance Number 000928-33 is amended to read as follows:

- (C) All notices to AT&T shall be sent by certified or registered United States mail, return receipt requested, or by a recognized overnight delivery service, or by hand delivery, postage or delivery charges prepaid, and addressed to:

AT&T Corp.
[~~5501 LBJ Freeway, Suite 445~~]
[~~Dallas, Texas 75240~~]
[Attn: _____, Real Estate and ROW]
[TEL: (972)]
[FAX: (972) _____]
1200 Peachtree St. NE @ Promenade I
Suite 2049
Atlanta, GA 30309
Attn: Supervisor , Real Estate and ROW
TEL: (404) 810-4556
FAX: (404) 810-4404

with copy to:

AT&T Corp.
5501 LBJ Freeway, Suite 445
Dallas, Texas 75240
Attn: [~~General~~] **Regional** Counsel
TEL: (972) **778-2648**
FAX: (972) **778-3711**

or to any other address AT&T may designate from time to time by written notice.

PART 7. Section 9 of Ordinance Number 000928-33 is amended to read as follows:

- (A) This agreement may be terminated by AT&T by delivering written notice to the City Manager at least [~~sixty~~] 60 days before the effective date of termination, provided AT&T ceases [~~provision of Long Distance Transmission Services~~] to use the facilities for any purpose within the [~~sixty~~] 60-day period.

(C) If AT&T fails to abide by the City's rights-of-way management rules or by the terms of this agreement, the City ~~[will deliver written notice]~~ shall notify AT&T ~~[setting forth such]~~ of the failure. AT&T shall have 45 days after receipt of ~~[such]~~ the default notice to cure the failure. ~~[and if]~~ If AT&T does not cure ~~[such]~~ the failure within ~~[such]~~ the 45-day period, ~~[then]~~ the City may terminate this Agreement by delivering written notice to AT&T at least 15 days ~~[prior to]~~ before the effective date of ~~[such]~~ termination. If AT&T ~~[is found to be offering]~~ offers services not allowed by this license and does not cease to offer ~~[such]~~ the services within 45 days after receipt of written notice from the City, the City may terminate this agreement, subject to applicable state and federal law, by delivering written notice to AT&T at least 15 days ~~[prior to]~~ before the effective date of ~~[such]~~ termination.

PART 8. Section 10 of Ordinance Number 000928-33 is amended to read as follows:

(C) AT&T or its successors or assignees and the City agree to begin good faith negotiations for a new license no later than six ~~[(6)]~~ months before the expiration of this license. If, on the expiration date of this license, AT&T has not requested that this agreement be extended or replaced and no new licensing agreement has been executed, the City of Austin may (1) purchase the facilities at the fair market value, as described in Section 11; (2) request AT&T to remove the facilities; or (3) allow AT&T to abandon the facilities.

PART 9. Section 11 of Ordinance Number 000928-33 is amended to read as follows:

(A) In accordance with ~~[the City Charter]~~ this agreement and subject to Section 10 (C), the City ~~[shall have the right to]~~ may purchase AT&T's facilities in the public rights of way.

PART 10. Part 2 of Ordinance Number 000928-33 is amended to read as follows:

(B) Subsequent annual fees shall be paid on the anniversary date of this ordinance. ~~[The fee shall be determined in the following manner:]~~ The initial fee payment of \$118,741.76 shall be increased by ~~[the percentage increase in the telecommunications sales tax base for the prior year reported for the City of Austin to the State Comptroller of Public Accounts]~~ 4% per annum.

(C) If AT&T, or another telecommunications provider, begins using AT&T's licensed facilities to provide local exchange service, AT&T shall pay access line charges to the City as set forth in Chapter 283 of the Texas Local Government Code. The failure of AT&T to remit any required access line charges results in default of this agreement.

