Chapter 37

ACQUISITION, USE, AND DISPOSITION OF CITY PROPERTY

Sec. 37-1. - Definitions.

The definitions in this section apply only in this chapter, and not to other chapters of the City Code of San Antonio, Texas:

Applicant means a person requesting a right or privilege governed by this chapter. More than one person may combine as one petitioner, but then each is jointly and severally liable for the obligations of the petitioner.

Application means a written request by a person for rights or privileges under this chapter.

Chief Information/Technology Officer means the director of the information technology services department.

City means the City of San Antonio.

City Manager means the City Manager of the City of San Antonio or the City Manager's designee.

Collocator means any person that installs wireless communications facilities on an existing tower located on city property.

Communications facility means antennas, antenna arrays, antenna facilities, radios, control boxes, cabinets, fiber optic and coaxial cables, conduit, ducts, power sources, ducts, spaces, manholes, vaults, poles, pole lines, fence, repeaters, converters, underground and overhead passageways, and other equipment, structures, plant, other appurtenances or tangible things, or any structure or object of any kind or character not particularly mentioned herein, owned, leased, operated, or licensed by a person located on city property used to provide communications services.

Developable property, as referenced in Section 37-2 (g), means property that is suitable to be developed under the adopted code of the City of San Antonio and is free of hazards or physical impediments and without disruption of, or significant impact on, natural resource areas or designated open space areas.

Director means the director of the city department responsible for the applicable duty as designated by city ordinance or the city manager.

Encroachment means any physical obstruction or any structure or object of any kind or character placed either in, under, or over any city street, alley or drainage easement in which the City has an interest.

Joint use agreement means a written agreement between government entities, including utility agencies, setting forth the terms and conditions for shared use of public property or facilities.

License means an instrument granted to allow the use or occupation of the city's interest in a property for a specific interval of time. Licenses require city council approval.

Permit, as defined in this chapter, means an instrument granting approval for encroachments into city right of way or drainage easements. A permit grants no property interest in the real property area subject to the permit.

Person means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

Petition means a written request by a petitioner for rights or privileges under this chapter.

Petitioner means a person requesting a right or privilege governed by this chapter. More than one person may combine as one petitioner, but then each is jointly and severally liable for the obligations of the petitioner.

Public right-of-way means any easement or fee over which the public has a right to pass, such as public streets, roads, lanes, paths, alleys, and sidewalks, whether improved or unimproved.

Utility agency means either or both of the San Antonio Water System and CPS Energy or their successors, for so long as the utility is a municipally-owned utility of the City of San Antonio.

Sec. 37-2. - General provisions.

(a) No one may use public rights-of-way or other property in which the city has an interest, whether in fee or easement, in a way governed by this chapter without acquiring rights under the relevant section. Nothing in this chapter requires a permit, license, or other document for utilities and utility agencies to place their facilities in public rights-of-way as otherwise permitted by law.

(b) An instrument granting rights or permission under this chapter, or a recordable memorandum regarding such instrument, shall be recorded in the official public records of real property of the county in which the land is situated unless it is a protected document not subject to public disclosure under federal, state, or local laws. Petitioner must pay the recording cost. A petition may be in letter form and must state the location of the affected city property and the purpose and scope of the proposed use or disposition of the property. The petition must further include such attachments and additional detail as the director may require.

(c) An instrument may not be granted for uses or activities that would substitute for compliance with another chapter of the city code, including Chapter 35 (Unified Development Code). No right granted under this Chapter substitutes for compliance with the requirements of another Chapter of the City Code. No grant of general right under this Chapter substitutes for acquiring a more specific applicable right provided for under this Chapter.

(d) Any city official to whom authority is delegated under this chapter may further delegate that authority to subordinates. Authority to bind the city to a contract may not be delegated below the level of director, unless the delegation is made personally by the city manager or a deputy or assistant city manager. All delegations must be in writing. Notwithstanding the foregoing, the director and assistant director of the department primarily responsible for real estate may sign and bind the city to all contracts, deeds, and other documents and instruments part of real estate transactions approved by council.

(e) Neither permits nor licenses under this chapter create property rights, and no permittee or licensee is entitled to compensation if the city revokes a permit or license.

(f) All construction, excavation, and placement of utilities or other facilities in public rights-of-way are subject to regulation under Chapter 29 of the City Code (Streets and Sidewalks).

(g) When fair market value must be determined under this chapter, the following procedures apply:

(1) A director may require that an independent professional appraisal be obtained. The City selects the appraiser and petitioner pays for the appraisal. Except as otherwise stated in a particular section, independent professional appraisals are of the fee simple interest in the affected land, according to its highest and best use.

(2) Alternatively, in cases where the property is not developable as provided under the Chapter 35 (Unified Development Code) of the City of San Antonio, a director may rely on an average of the per-square-foot Bexar Appraisal District-assessed land values in the vicinity.

(3) In choosing between requiring a formal appraisal or relying on Bexar Appraisal assessed values, a director should balance whether the probable cost of a formal appraisal is disproportionate to the probable value of the affected property. Streets and alleys must be appraised not as rights-of-way but as if marketable fee simple title to the affected property were in private hands and the city were condemning it for public-street right-of-way. Appraisals of other strips or oddly configured parcels must not be discounted because of the parcels' configuration.

(4) Independent appraisals should conform to the State of Texas licensing and certification board appraisal standards as well as the Uniform Standards of Professional Appraisal Practice.

(h) Those receiving rights under this chapter must maintain in good repair and condition any structure, covering, or appurtenance and the accompanying structural members extending over, under, or on public rights-of-way, drainage, or utility easement, or other city property. No such encroachment may be a nuisance or safety hazard. All such encroachments, when built or renovated, must conform to the latest edition of the International Building Code and other applicable building discipline codes, and installation must be consistent with the city's right-of-way management ordinance.

(i) Grants of rights under this chapter do not relieve petitioner of any other approvals, permits, or licenses that may otherwise be required. No permit or license should be granted under this chapter if the proposed use would impair the primary public purpose of the affected public right-of-way or other city property.

(j) Driveways, bridges, and other ingress and egress-related encroachments over drainage easements need not be licensed or permitted under this chapter but all such matters are subject to review and approval by the flood plain administrator.

(k) Before granting or recommending granting rights under this chapter, the director may canvass some or all interested city departments, utility agencies, and registered neighborhood associations in the vicinity. Based on comments received, the director may impose or recommend imposing special terms as a condition of approval. Sales or conveyances under section 37-12 (Sales or conveyance of surplus real property) require canvassing per that section.

(l) Nothing in this chapter governs use in the ordinary course of business of park and recreation facilities, city cemeteries, airport facilities, community centers, libraries, convention facilities, the Alamodome, or leases or other uses of city-owned or operated office or retail space, parking lots, and garages.

(m) Responsibilities allocated to a city department in this chapter automatically succeed to any other department into which the designated department or the relevant function of that department is reorganized.

(n) Nothing in this chapter impairs an otherwise applicable requirement to seek planning commission approval of a proposed transaction.

(o) Except as may be specifically provided as to a particular fee, all processing and other fees and charges provided for in this chapter are non-refundable.

(p) Nothing in this chapter repeals by implication or otherwise impairs the effect of any part of chapter 6 (Buildings), chapter 29 (Streets and Sidewalks), chapter 32 (Tourist and Trade Center Areas), or chapter 35 (Unified Development Code) of the City Code of San Antonio, Texas.

(q) The city has a lien against property of non-governmental persons granted rights governed by this chapter until the sums owing under this chapter are paid.

(1) The city may assert the lien by recording a lien claim in the real property records of the county in which the property subject to the lien is located.

(2) The property subject to the lien is all property of the person making use of city property any portion of which is within one hundred (100) yards of the unpaid-for use of city property. The lien extends to property beyond the 100-yard limit, but only if it adjoins property within the 100-yard limit.

(3) Lien claims may be signed and acknowledged by the city manager without council action.

(4) The lien may be enforced judicially in any court of competent jurisdiction.

(5) The lien applies only to sums owing for periods after January 1, 2010.

(6) This section does not imply that fees the city otherwise requires to be paid up front may be paid other than up front.

(r) No petitioner seeking rights under this chapter may acquire such rights before paying in full for all previously obtained rights of any type governed by this chapter.

(s) Applicants seeking rights under this chapter are responsible for providing any surveys required in an application prior to the application being scheduled for City Council review. Applicants must pay for all costs associated with such surveys.

(t) Upon receipt of a complete application or petition and associated fees, the director shall process an application under this chapter. Applications are valid for one year from date of acceptance by the director.

(u) The director may file a notice of expiration or non-compliance in the official records of the county where property is located if a license, permit or other instrument granting approval under this chapter expires or is terminated and the licensee does not remove any improvements from the licensed area or renew authority for such improvements to remain. Failure to file the notice does not waive any rights to which the city may be entitled.

(v) Any provision of this chapter authorizing an expenditure of funds must be supported and accompanied by (1) a prior appropriation approved by City Council and (2) an unencumbered appropriated balance equal to or exceeding the expenditure.

Sec. 37-3. - Permits for encroachments onto public streets, alleys, or drainage easements.

(a) Permits allowing encroachments on public streets, alleys or drainage easements may be administratively approved by the director but are subject to approval of the underlying fee owner as otherwise provided by law. If an encroachment is specifically addressed in another section of this chapter, the more specific section applies. The director may process permit requests and may establish forms and procedures to carry out this section, but all permits must be reviewed and approved by the director, or designee, overseeing public rights of way if in a street or alley, or by the city floodplain administrator, or designee, if in a drainage easement. Permits under this section may be issued by the director without specific council action. Sidewalks are included in the eligible area for a permit provided that the sidewalk is within the area of a dedicated public street, alley or other public right of way.

(b) Permits shall be issued for a period of 10 years, and may be renewed. The director may revoke a permit at any time should the director determine that use under a permit interferes with the city's use of the right of way or drainage easement. Permits may be granted only for (i) purposes permissible under Texas Transportation Code Sec. 316 or any successor statute thereto; (ii) fire escapes or other safety features or (ii) balconies, awnings, or other interconnected walkways between buildings. Permits may not be issued unless the director finds that:

(1) the improvement or facility will not be located on, extend onto, or intrude on:

(A) the roadway; or

(B) a part of the sidewalk needed for pedestrian use;

(2) the improvement or facility will not create a hazardous condition or obstruction of vehicular travel, pedestrian travel or drainage on the municipal street;

(3) the improvement will not create private parking within the public right of way;

(4) the improvement or facility will not conflict with the Americans with Disabilities Act; and

(5) the design and location of the improvement or facility includes all reasonable planning to minimize potential injury or interference to the public in the use of the permitted area.

(c) Permits are subject to the following limitations:

(1) All permitted encroachments must allow for adequate clearances between the facility or improvement and utility lines. Clearances from structures to utility lines must comply with the nationally recognized building code adopted by the City and the National Electric Safety Code;

(2) A permit holder must pay the costs to relocate a municipal or public utility facility or improvement in a municipal street associated with the installation of a facility or improvement of the permit holder if requested by the city or a utility agency; and

(3) The city or a utility agency authorized by the municipality may remove, without liability, any part of a facility for which a permit has been issued if there is a public use, public utility use, or need to access the site.

(d) Permits under this section may only be issued by the director without specific council action to:

(1) a person who owns the underlying fee title to the real property;

(2) an entity that holds a lease of the property from or has written permission to use the property from a person who owns the underlying fee title to the real property; or

(3) adjoining property owners where the City of San Antonio owns the fee underneath the street, alley or drainage area.

(e) Any encroachment obstructing public passage, utility facilities, or other uses of public streets or alleys is ineligible for a permit. A permit may cover as many eligible encroachments as a building has, but a separate permit must be obtained for each building of a project. Where encroachments do not relate to a building, permits cover a radius of two hundred fifty (250) feet. Any encroachment not within a 250-feet radius of a permitted encroachment must obtain a separate permit.

(f) Permits cannot be granted over the objection of the:

(i) Historic Preservation Officer for areas zoned Historic, Historic District, River Improvement Overlay or Mission Protection Overlay;

(ii) the Planning Director for areas zoned “D” (Downtown);

(iii) Director assigned oversight of the property where the encroachment will occur; or

(iv) the City Manager;

except with council approval.

Each permit must be approved as to form by the City Attorney’s Office.

(g) The director may specify the construction, characteristics, quality, and placement of encroachments. The city council may require relocation or removal of an encroachment when appropriate for the efficient use of the public street or alley. The petitioner is responsible for the cost associated with relocation or removal.

(h) Permits need state only: (i) the city's identity as the issuing authority, (ii) the identity and address of the permittee, (iii) a description of the affected city property, (iv) the scope of the encroachment permitted, (v) the permit's duration, subject to revocation, and (vi) any special conditions imposed under subsection 37-3. Permits must be signed on behalf of both the city and the petitioner and be in recordable form.

(i) Property owners may install and maintain mail boxes conforming to U.S. Postal Service regulations without a permit under this chapter provided that the mail box shall not conflict with the Americans

with Disabilities Act, interfere with pedestrian use of the sidewalk, or interfere with city or utility agency use of the right-of-way. Interference is determined at the sole discretion of the director as to city, and applicable local, state and federal laws as to utility agencies.

(j) Permits issued after January 1, 2010 are not effective unless recorded in the real property records of the county in which the encroachment is located.

Sec. 37-4. - Joint Use Agreements and Intrajurisdictional Agreements

(a) Petitions for intrajurisdictional agreements or joint use agreements on city owned property must be submitted to the director. Petitions relating to parks property must be submitted to the parks director, and petitions relating to airport property must be submitted to the airport director. Requests that involve a reservation or creation of property rights upon execution of the document or sale of city property shall require city council approval.

(b) The director may process requests and may establish forms and procedures to carry out this section. Agreements under this section must either be recorded or described in a recorded memorandum of agreement. For the purposes of this section, city property does not include utility easements or public rights of way that utility agencies are otherwise permitted by law to use. Nothing in this section alters the rights and obligations of the city and utility agencies in street repairs, widenings, and reroutings.

(c) If the city terminates a utility agency's rights under an agreement subject to this section, the utility agency must, at its own expense, find an alternate place for its facilities and remove and relocate the facilities unless otherwise authorized by city council.

(d) As to property in which the city owns only an easement, the Petitioner need not pay more than the processing fee for the granting or release of an agreement unless otherwise required in this chapter. A director may, without council action, approve agreements conforming to this section and not impairing the city's rights in the affected area. The agreement may impose limitations on the proposed use to assure city easement rights are not interfered with and is terminable only if the use interferes with city's easement rights. Owners of the fee underlying city easements need not apply for rights under this chapter, provided that in no event may an underlying owner's use of the fee impair or interfere with the city's easement rights.

(e) No agreement under this section grants the right to trespass on or otherwise use property in which persons other than the city have an interest. When the city does not own the fee or another owns an easement that would be affected by the joint use agreement, petitioner must get consent from the owner of all non-city interests as otherwise provided by law, however, utility agencies shall not be required to provide consent from third-party easement holders as a condition for granting the joint use agreement. The city shall have no obligation to obtain consent on behalf of applicants or utility agencies, and said applicants or utility agencies are responsible for obtaining any consent required by law.

Sec. 37-5. - RESERVED.

Sec. 37-6. - RESERVED.

Sec. 37-7. - Canvassing and Responses to Canvassing

(a) When property in which the City has an interest is proposed for sale, for a grant of easement, or for grant of another right that may affect a City department's use of the property the director, in the director's sole discretion, must canvass relevant City departments and utility agencies.

(b) Requests for reservation of utility or other easements must be accompanied by metes and bounds descriptions/surveys.

(c) Applicants under this section are required to comply with all laws, rules, and regulations of general applicability.

Sec. 37-8. - RESERVED.

Sec. 37-9. - Licenses of city property.

(a) Uses of property owned by the city in fee that are subject to this chapter but are not described elsewhere in this chapter must be licensed. Licenses shall be for a ten year period unless otherwise approved by City Council. Licenses are terminable according to their terms. Petitions for ~~such~~ licenses must be submitted to the director. The director may process license requests and may establish forms and procedures conducive to carrying out this section. If a use is specifically addressed in another section of this chapter, the more specific section applies.

(b) The city may collect license fees for uses of public right-of-way or other city property before rights under this section have been granted, even if the uses are now eligible for a permit.

(1) Those using public right-of-way or other city property in a manner subject to this section without a license before September 1998 must pay city a fee equal to fifty (50) percent of the license fee for the unauthorized use prescribed at the time the fee is paid.

(2) For all uses from September 1998 forward, those using such property in a manner subject to this section without a license must pay the fees that were in effect from time to time for rolling ten-year licenses until December 1, 2009. Past-due license fees need not be paid for a period after December 1, 2009, but after that date, past-due permit fees must be paid.

Sec. 37-10. - RESERVED.

Sec. 37-11. - Closure, vacation, and abandonment of public right-of-way.

(a) Petitions for closure, vacation, and abandonment of public streets or alleys must be submitted to the director. The director may process requests and may establish forms and procedures to carry out this section.

(b) Petitioner must demonstrate ownership of each property abutting the right-of-way and must submit at least a category 1B standard land survey with field notes for each abutting-property owner's portion of the affected public rights-of-way. All owners of abutting property must consent to the action under this section. The consent must be in writing. The right of way will be presumed to exist by easement.

(c) No fees of any type are owed for city-initiated closures, vacations, or abandonments.

(d) The director shall provide notice of the petition to utility agencies and may require a petitioner to sign and deliver an agreement setting out the applicable closure fee and conditions imposed by city departments and utility agencies.

(e) At least thirty (30) days before the city council takes up a proposed closure, vacation, or abandonment, the director shall cause signs to be placed at or near the public right-of-way to be closed and shall send letters to persons the director reasonably believes to be owners of all tracts within five hundred (500) feet of any portion of the affected right-of-way notifying them of the proposed closure. The signs must state the proposed action, the location and date of city council action, and must remain in place until city council acts on the petition. Signs need not be erected, and letters need not be sent, for undeveloped ("paper") public right-of-way or for slivers not affecting the path of public travel. In determining ownership of tracts, the director need not inquire further than the ownership listings by the Bexar Appraisal District.

(f) Closing, vacating, and abandoning public right-of-way must be approved by ordinance. After city council approval, the director may issue a document indicating release of the right-of-way easement in the street subject to any conditions included in the ordinance.

(g) An applicant petitioning for a street closure assumes all risk of title as to the affected street or alley segment and as to what utility agencies or companies may be using the segment. City need not inquire into these matters.

Sec. 37-12. - Sale or conveyance of surplus real property.

(a) Petitions for the sale of all city surplus property must be submitted to the director or assistant director responsible for the disposition of city real property. The director or assistant director will process requests and may establish forms and procedures to carry out this section.

(b) The director shall establish a process for canvassing a proposed sale or conveyance of city property.

(c) The director may, at the director's discretion, contract with a broker to sell property as provided in Chapter 253 of the Texas Local Government Code.

(d) Surplus status of real property may finally be determined only by city council, upon the recommendation of the planning commission, if applicable, and only city council can authorize sales. All sales of property must conform to law.

(e) A request to canvass a particular city-owned property for designation as surplus for disposition purposes initiated by a department director or assistant director shall not be subject to a processing fee.

Sec. 37-13. - RESERVED.

Sec. 37-14. - Granting and releasing easements.

(a) Petitions for granting or releasing easements must be submitted to the director responsible for oversight of the easement. The director may process requests and may establish forms and procedures to carry out this section.

(b) Any agreement under this section may impose limitations on the proposed use to assure city and utility agency rights are not interfered with. Owners of the fee underlying city easements need not apply for rights under this chapter, provided that in no event may an underlying owner's use of the fee impair or interfere with the city's or utility agency's easement rights.

(c) Prior to granting an easement, the director may require petitioner to demonstrate that the city owns the fee of the property for which an easement is being requested and that no inconsistent rights have previously been granted.

(d) The value of the easement to be granted on city owned property is presumed to equal the fair market value of the fee, determined according to the requirements of this chapter. Nothing in this chapter requires the city to grant an easement, and if a person wants an easement from the city, the city may negotiate for a higher price than the minimum described above. Petitioners must remove all improvements in easements on city owned property to the satisfaction of the director prior to recordation of the release instrument. Petitions to release an easement on city owned property need pay only the processing fee.

(e) If requested by the director, petitioner must sign and deliver an agreement setting out the applicable fee and conditions imposed by city departments and utility agencies.

(f) Easements will not be granted when they would be inconsistent with the city's use or planned use for the affected property and may be granted or released, after acceptance, only with city council authorization.

Sec. 37-15. - Rights of entry.

(a) A director may, without council action, issue a right-of-entry agreement to a person for city property in order for such person to conduct surveying, measuring, testing, staging, parking, measuring, photographing, inspecting, ESAs 1 & 2, mowing, general clean-up, and similar activities on city property for which their departments are responsible. A right of entry granted under this section must be for a term of six (6) months or less.

(b) A director also may, without council action, enter into right-of-entry agreements permitting the city to conduct surveying, measuring, testing, staging, parking, photographing, inspecting, ESAs 1 & 2, mowing, clean-up, and similar activities on property the city may wish to acquire or on property the city otherwise needs to enter in conducting its affairs. Directors may process requests and may establish forms and procedures to carry out this section. A director may not pay more than eight hundred fifteen dollars ($815.00) or give more than eight hundred fifteen dollars ($815.00) in value to get a right of entry without specific council approval.

(c) A director may, without council action, enter into agreements with persons and property owners permitting the city to improve drainage characteristics of land within the city's jurisdiction. Such action may include removing vegetation and contouring the surface.

(d) Agreements authorized by this section must be in writing and in form satisfactory to the city attorney.

Sec. 37-16. – Capital project acquisition of interests in real estate.

The city manager, or designee, may, with no further authority than this Code section, acquire interests in real estate on behalf of the city in connection with any capital project approved by city council by adoption of an ordinance. Documents pertaining to the acquisition transaction must be in form satisfactory to the city attorney.

Sec. 37-17. - Notices of non-acceptance.

(a) This section does not apply to any public right-of-way dedication to the city, whether by plat or separate instrument.

(b) When the director learns of real property interests deeded or conveyed to the city (a) without the city's consent, or (b) which the city has never accepted, the director must canvass city departments and utility agencies to determine whether a use exists for the property.

(c) If a use exists, the director must seek city council authorization for the acceptance of the property.

(d) If a use does not exist the director may, without city council approval, cause a notice of non-acceptance of the real property to be filed in the appropriate county records. Such notice of non-acceptance shall have the effect of rendering such deed or conveyance void and of no effect. Such notices shall have no effect on plats recorded in the real property records of a county, dedications on which may only be removed through the applicable platting process initiated by the property owner. ,

(e) A director shall not issue a notice of non-acceptance upon request of a person if such issuance would cause property to become non-compliant with any existing local, state or federal statutes.

(f) If a utility agency identifies a use for the property, the agency must assume responsibility for the property and its maintenance as a condition of the city's acceptance.

Sec. 37-18. - Lease and License Related Matters

(a) The director may process requests and may establish forms and procedures to carry out this section.

(b) Leases and license agreements must be approved by city council, but nothing in this chapter impairs a delegation of authority outside this chapter. Lease amendments, renewals and extensions must be approved by city council unless the approved lease authorizes otherwise per its terms.

(c) If a lease is approved by City Council, the lease and all lease-related documents may be signed by (1) the Director of a department that is a tenant under the lease or (2) the Director of the department employing the personnel responsible for lease negotiations.

(d) If budgeted funds are available, a department director may, without further council action, enter into leases, licenses, and similar agreements in which City is tenant or licensee for so long as the agreement is for a temporary use not to exceed a week and the temporary use relates to the mission of the director’s department. This does not authorize renewals for succeeding weeks or combining serial, one-week uses for the same premises so that City has a term longer than one week. The agreements for temporary use must be approved as to form by the City Attorney’s Office.

Sec. 37-19. - RESERVED.

Sec. 37-20. - Releases of lien.

(a) A director of a department responsible for putting a lien on private property may, without council action, release the lien if the amount secured by the lien is paid in full. The director may also release a lien on receipt of a compromised amount if the compromise is otherwise authorized directly by council or by delegation of authority.

(b) The director may, without council action, release liens in favor of the city when advised in writing by the city attorney's office that the liens are invalid according to law.

Sec. 37-21. – Information technology installations on city owned property

(a) *Use of city-owned traffic poles.*

(1) Petitions for the use of city-owned traffic poles for the attachment of appropriate wireless communication facilities shall be submitted to the chief information/technology officer. The petitioner shall enter into a pole attachment agreement with the city. The terms and rates of the pole attachment agreement shall be non-discriminatory.
(2) The chief information/technology officer shall establish forms, processes and procedures for carrying out this section. At the request of the chief information/technology officer, the petitioner will provide engineering network designs and other relevant information in order to determine the most appropriate use of city-owned traffic poles.
(3) A pole attachment agreement will not grant the petitioner the right to use city rights-of-way. The petitioner must establish the legal right to use city rights-of-way outside the scope of this section.
(4) When traffic poles on which wireless devices are attached must be moved to accommodate a public works project, the petitioner will be required to relocate the wireless devices and any related facilities at its own expense. Upon termination of the pole attachment agreement for any reason, the petitioner shall remove or otherwise dispose of the wireless devices within sixty (60) days. Failure to take this action will result in considering the wireless devices abandoned and they will become the property of the city.

(b) *Fiber Optic Licenses.*

(1) Petitions to install fiber optic cable, conduit, and related communications facilities on city right-of-way or other city property must be submitted to the chief information/technology officer. The chief information/technology officer may process requests and may establish forms and procedures to carry out this section. This section does not apply to a certificated telecommunications provider licensed by the Texas Public Utility Commission that is providing local exchange telephone service within the city and does not include public right-of-way that is a drainage easement unless the city also owns the underlying fee interest.

(2) Fiber optic licenses have ten-year terms.

(3) The annual consideration amount for use of public right-of-way for the purpose of installing aerial and/or subterranean fiber optic and related communications facilities is based on the fair market value of the right-of-way used by the petitioner. The licensed area must be as wide as the petitioner will reasonably need to maintain the licensed facilities but not more than twenty (20) feet. Notwithstanding subsection 37-2(i), the chief information/technology officer in his discretion my utilize internal staff or engage an independent professional consultant to conduct an appraisal of the right-of-way subject to the license, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. The petitioner will be responsible for paying the right-of-way appraisal separate from the processing fee. The chief information/technology officer will determine the fair market value on a per-linear-foot basis of the right-of-way area associated with the petitioner's network footprint. An annual escalation factor of four (4) percent will be applied to the consideration amount for year one in order to derive the consideration amount for years two to ten of the license term. At the discretion of the chief information/technology officer, the city may negotiate a discount off the total licensing fee in exchange for in-kind contributions of equivalent value.

(4) The licensing fee will authorize the petitioner to install fiber facilities on city right-of-way, but does not grant authority to use poles or other infrastructure of the city or utility agencies. The chief information/technology officer may require a petitioner to sign and deliver an agreement setting out the applicable license fee and conditions imposed by city departments and utility agencies. When reasonably conducive to the efficient use of the property on which fiber facilities are located, the chief information/technology officer may require licensee to relocate the fiber optic facilities, including all related communications facilities, at licensee's expense.

(5) Following termination of the license for any reason, licensee must remove or otherwise dispose of all communications facilities at its own expense within sixty (60) days. Failure to take this action will result in the fiber facilities being considered abandoned and the property of the city.

(c) *Wireless communications towers on city property*.

(1) Petitions for the right to erect a wireless communcations tower on city property or collocate antennae facilities on a wireless communications tower must be submitted to the chief information/technology officer. The chief information/technology officer may process requests and may establish forms and procedures to carry out this section. Wireless communications leases and collocation licenses are for 20-year terms.

(2) The city may lease space for the erection of wireless communications towers. When erected, wireless communication towers remain personal property and belong to the provider during the existence of the lease. The lease may specify the required height of the wireless communications tower and the required number of antennae array locations. If following termination of a tower lease for any reason, the provider fails to remove the wireless communications tower within sixty (60) days or otherwise dispose of the tower, the tower shall be considered abandoned and shall become the property of the city.

(3) The provider shall reserve space for the installation of one antennae array and related communications facilities on the wireless communications tower for the city’s use at no cost to the city for the entire life of the lease. Petitioner’s employees and contractors must wear a

suitable photo ID badge while on the premises, to be provided by the provider, which includes a nominal 1 ½" square personal photo, unique logo and labeling that identifies the provider and the employee or contractor by name and a telephone number where confirmation of employment may be readily confirmed.

(4) Despite the wireless communications tower being the provider's personal property during the term of a lease, the city reserves the right to charge processing fees and the consideration amount to collocators desiring to install antennae facilities on the city tower. If a wireless communications tower was built before adoption of this section, the provider must obtain a tower lease from the city, and any collocator must obtain a collocation license for its antennae facilities.

(5) The petitioner must annually provide the city a list of all wireless communications towers deployed by petitioner on city property, including addresses, location, and GIS coordinates in a form approved by the chief information/technology officer.

(6) The city attorney must approve the form of each tower lease and collocation license that does not conform to this section, both of which must be approved by the city council. The chief information/technology officer can bind the city to tower leases or collocation licenses without specific city council action, if they conform to this section.

(7) Validation of Proper Operation. Within forty-five days of commencement of operations, the petitioner shall provide verification by qualified experts that the radio frequency levels comply with FCC regulations.

(8) The annual consideration amount for use of city property for the purpose of installing a wireless communications tower is based on the fair market value of the city property leased by the petitioner, including, but not limited to, uninhabitable enclosed structures, all communications facilities and related city property fenced in and enclosed therein. The Chief Information/Technology Officer will determine the fair market value on a cubic foot basis (width x length x height) of the city property area associated with the petitioner's lease. The Chief Information/Technology Officer in his discretion may engage an independent professional consultant to determine the lease rate. An annual escalation factor of four (4) percent will be applied to the consideration amount for year one in order to derive the consideration amount for years two to twenty of the lease term. At the discretion of the chief information/technology officer. The city reserves the right to revise its rate structure based on market conditions.

(d) *Communications facilities installed on city property not addressed in subsections (a), (b), and (c)*.

(1) Communications facilities installed on city property pursuant to this subsection shall be by agreement negotiated by petitioner and the chief information/technology officer.

(2) The annual consideration amount for use of city property is based on the fair market value of the city property used by the petitioner. The agreement may include an annual escalation factor of four (4) percent may be applied to the consideration amount for year one in order to derive the consideration amount for future years covered by the agreement.

(e) *Interference with public safety communications*.

Whenever the city has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by the wireless communications infrastructure installed by one or more wireless communication providers, the following steps shall be taken:

(1) The city shall provide notification to all wireless communications service providers operating in the city of possible interference with the public safety communications equipment. Upon such notification, the owners shall use their best efforts to cooperate and coordinate with the city and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.

(2) If any wireless communications service provider fails to cooperate with the city in complying with the wireless communications service provider's obligations under this section or if the FCC makes a determination of radio frequency interference with the city public safety communications equipment, the wireless communications service provider who fails to cooperate and/or the owner of the wireless communications facilities which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the city to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in the "Best Practices Guide" within twenty-four (24) hours of the city's notification.

Sec. 37-22. - Fee and Consideration Schedule

Fees for processing requests are non-refundable. All fees and amounts are due prior to council consideration or final approval by the director as applicable.

The listing of sections is made solely to facilitate cross referencing within this chapter. If the reference is inaccurate or not comprehensive, it does not affect the validity of the application of the fees and amounts due.

Permit, Document or Action:	*Process Fee:*	*Consideration Amount:*
Communications Facilities not installed pursuant to 37-21(a), (b), and (c)	None	By agreement with Chief Information/Technology Officer; Fair Market Value of area covered
Encroachment Permit – public street, alley or drainage right of way *Section 37-3*	$100	$500

Granting Easement – granting on city property *Section 37-14*	$815	Greater of $5000 or fair market value of fee area covered by easement.
Releasing Easement – releasing on city property *Section 37-14*	$815	Greater of $5000 or fair market value of fee area covered by easement.
Releasing Easement – releasing on non-city owned property *Section 37-14*	None	None
Fiber Optic License – use of right of way *Section 37-21*	$3,500	Fair Market Value of the total number of square feet of right-of- way x total number of linear feet of right-of-way; paid annually; annual escalation factor of 4% per Section 37-8.
Joint Use Agreements, Intrajurisdictional Agreements – granting on city owned *Section 37-4*	$500	Fair Market Value of area covered
Joint Use Agreements, Intrajurisdictional Agreements – granting on non-city owned *Section 37-4*	$500	None
Joint Use Agreements, Intrajurisdictional Agreements – releasing on city owned *Section 37-4*	$500	None
Joint Use Agreements, Intrajurisdictional Agreements – releasing on non-city owned *Section 37-4*	$500	None
Lease Assignment *Section 37-18*	$1,500	None

License Assignment *Section 37-18*	None	None
License – use of city property *Section 37-9*	$815	Greater of eight thousand one hundred fifty dollars ($8,150.00); *or* **(1)** Ten (10) percent a year of the fair market value for surface uses; **(2)** Seven and one-half (7½) percent a year of the fair market value for air uses; and **(3)** Five (5) percent a year of the fair market value for sub-surface uses.
Notice of Non Acceptance *Section 37-17*	None	None
Notification Letter(s) *Section 37-11*	None	None
Notification Sign(s) – Procuring, Installing, Removing *Section 37-11*	Application specific calculation - Petitioner must pay the cost at least 30 days prior to an item being scheduled for city council consideration	None
Pole Attachment Agreement – use of city property *Section 37-21*	$3,500	Consistent with Section 54.204 of the Public Utility Regulatory Act.
Recording Costs *Section 37-2*	Application specific calculation - Petitioner must pay the cost at least 30 days prior to an item being scheduled for city council consideration	None
Right of Entry – Granted to city *Section 37-15*	None	A director may not pay more than eight hundred fifteen dollars ($815.00) or give more than eight hundred fifteen dollars ($815.00) in value to get a right of entry without specific council approval.
Right of Entry – Granted by city *Section 37-15*	Up to $815 (cash or equivalent value)	None

Sale of Real Property – conveyance of city property *Section 37-12*	$815	Per Texas Local Government Code or other applicable statute
Street or Alley (closure or restriction) – release of city property *Section 37-11*	$815	Fair Market Value of segment to be closed or restricted.
Wireless Communication Tower - use of city property *Section 37-21*	$3,500	Fair Market Value on a cubic feet basis (width x length x height) of leased property; paid annually; annual escalation factor of 4% per Section 37-21(c).

Sec. 37-23. - Indemnity of city.

(a) Any permit, license, or agreement accepting rights under this chapter automatically contains the indemnity contained in this section.

(b) These definitions apply to the indemnity provisions of this section:

> *Indemnified claims* mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an indemnitee that give rise to assertions of indemnitee liability under this section, whether or not the person is a party to this agreement. Indemnified claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.
>
> *Indemnitees* mean the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an indemnified claim has been asserted.
>
> *Indemnitor* means petitioner.

(c) Indemnitor must indemnify indemnitees, individually and collectively, from all indemnified claims.

(d) If indemnitor and one or more indemnitees are finally adjudged to be jointly liable for indemnified claim, indemnitor need not further indemnify the so-adjudged indemnitees from liability arising from the indemnitees' adjudicated share of liability. But despite allegations of indemnitee negligence, indemnitor must nevertheless defend all indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the indemnitee who has been adjudged to be negligent and must continue to indemnify other indemnitees.

(e) There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of indemnitees.

(f) Indemnitor must promptly advise the city in writing of any indemnified claim and must, at its own cost, investigate and defend the indemnified claim. Whether or not the city is an indemnitee as to a particular indemnified claim, the city may require indemnitor to replace the counsel indemnitor has hired to defend indemnitees. The city may also require indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by city. Regardless of who selects the counsel, the counsel's clients are indemnitees, not indemnitor.

(g) In addition to the indemnity required under this section, each indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing indemnitor's obligations under this indemnity paragraph.

(h) Indemnitor may not settle any indemnified claim without the consent of the city, whether or not the city is an indemnitee as to the particular indemnified claim, unless (A) the settlement will be fully funded by indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any indemnitee. The city's withholding its consent as allowed in the preceding sentence does not release or impair indemnitor's obligations of this indemnity paragraph. Even if the city is not an indemnitee as to a particular indemnified claim, indemnitor must give city at least twenty (20) days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an indemnitee must first be approved by city council.

(i) Nothing in this section waives governmental immunity or other defenses of indemnitees under applicable law.

(j) If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any indemnified claim five (5) percent by the indemnitees and ninety-five (95) percent by the indemnitor. Indemnitor need look only to the city for indemnitees' five (5) percent if the city is an indemnified party as to a particular indemnified claim.

(k) This section controls whether or not petitioner's agreement with the city so provides. This section controls even if the agreement provides otherwise, unless an ordinance expressly states that city council intends to override this section as to the particular use by the particular petitioner.

(l) Entities that may not lawfully grant indemnities or may not lawfully be required to do so by the city do not grant the indemnity provided for in this section by accepting rights under this chapter.

Sections 37-24 to 37-40 – RESERVED.