

(Ordinance Summary published in the Hillsboro Star-Journal on Apr. 13, 2022 and the full text of the Ordinance made available at <https://cityofhillsboro.net> for a minimum of one (1) week from the date of publication)

## ORDINANCE NO. 1346

AN ORDINANCE AMENDING CHAPTER 15 TO CREATE ARTICLE 9, SECTIONS 15-901 THROUGH 15-905 OF THE CODE OF THE CITY OF HILLSBORO, KANSAS, PROVIDING A UTILITY POLE ATTACHMENT FEE RATE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HILLSBORO, KANSAS,

SECTION 1. Chapter 15, Article 9, Sections 15-901 through 15-905 of the Code of the City of Hillsboro, Kansas (the "Code") are hereby created and read as follows:

### **15-901. Pole Attachments.**

No person or entity, other than the city or a department thereof, shall attach or maintain any fixture to or place or maintain any facilities or wires on any city facilities, including any utility pole or other fixture or facility of the city, within city rights-of-way or easements without: (1) a valid and unexpired pole attachment agreement approved by the governing body after the date hereof and executed by such applicable person or entity, and (2) payment of a pole attachment fee as set forth in Section 15-902, or as may be hereinafter approved as alternative lawful compensation in a pole attachment agreement approved by the governing body after the date hereof, or such other amount as may be established hereinafter by the governing body by resolution or ordinance. Failure to hold and maintain a current and valid pole attachment agreement with the city shall not excuse payment of the pole attachment fee at the rate required herein and plus additional penalties. Where a pole attachment agreement expires, and in addition to any penalties or other requirements, the licensee during any holdover period shall pay monthly one-twelfth (1/12) of the rate set forth in Section 15-902 until a valid agreement is obtained or the attachments are removed. The licensee shall indemnify and be responsible to pay all costs incurred by the city in any way due or arising from any such attachment or violation of any provision hereof or of any pole attachment agreement including, but not limited to, attorneys' fees, except as may be otherwise expressly provided by agreement.

### **15-902. Pole Attachment Fee Rates.**

The following pole attachment fee rate is stated on a per attachment, per pole, per year basis and shall take effect on March 1, 2022:

\$10.00 per attachment, per pole, per year

The pole attachment fee rate shall apply to all existing and future pole attachments, regardless of the terms of any existing pole attachment agreement. Each attachment of any of a

licensee's facilities in direct contact with or otherwise supported by a pole or other city facilities shall be considered a separate pole attachment. An "attachment" shall include, but not be limited to, each line, wire, conduit, or other approved equipment physically connected directly or indirectly to the applicable pole or other city facility.

#### **15-903. Payment and Affidavit.**

Unless otherwise provided by a pole attachment agreement, amounts due under this paragraph shall be paid to the city not later than January fifteenth (15<sup>th</sup>) of each year for the current calendar year (or pro rata portion thereof if less than a full year) and any amount unpaid after such date shall accrue interest payable to the city at the rate of nine (9) percent per annum, compounded monthly. Each payment shall be accompanied by an affidavit of the number of attachments to city owned poles, fixtures, or facilities which exist as of January 1 that year and computation of the fee based on the number of attachments as of that date.

#### **15-904. Agreement Required.**

No pole attachment shall be authorized except by authorized pole attachment agreement, which shall include such provisions as necessary to protect the public interest and provide for payment of the required compensation consistent with this section. An application may be required containing such information as may be necessary to determine the appropriateness of the attachment and may contain a fee requirement in an amount sufficient to reimburse the city its costs or such other reasonable basis as permitted by law. A franchise or public ways use permit agreement shall not be deemed to authorize pole attachments unless hereinafter expressly so provided therein. No pole attachment agreement shall be granted to any person or entity unless such person has a valid franchise or public ways use permit agreement with the city, whether separately granted or expressly incorporated in the pole attachment agreement. A pole attachment agreement shall be reviewed and approved, denied, or conditioned as the public interest dictates subject to all applicable law. Nothing herein shall be interpreted as a waiver of any rights in a duly authorized and lawful existing agreement with the city.

#### **15-905. Penalty for Violation.**

Any person or entity violating any provision of this section shall, in addition to being subject to all other remedies herein, shall be punished as provided in Section 1-118 of this code. Each day's violation shall constitute a separate offense.

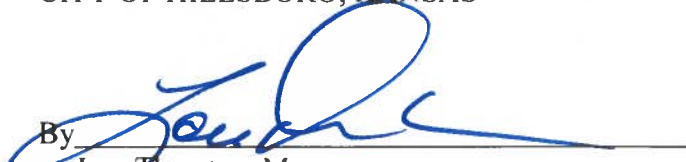
SECTION 2. This Ordinance shall take effect on and be in full force after its adoption by the governing body of the City, approval by the Mayor and either (a) publication once in the official newspaper of the City, or (b) publication of a summary hereof certified as legally accurate and sufficient by the City Attorney.

*[Remainder of Page Intentionally Left Blank]*

PASSED, ADOPTED AND APPROVED by the governing body of the City of Hillsboro, Kansas, this 5<sup>th</sup> day of April, 2022.



CITY OF HILLSBORO, KANSAS

By   
Lou Thurston, Mayor

ATTEST:

By   
Danielle Bartel, City Clerk